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## THE LAW RELATING TO WATER AND WATER POWER COMPANIES WITH AN APPENDIX CONTAINING THE LAW RELATING TO THE WATER SUPPLY COMMISSION, RULES OF PROCEDURE AND FORMS.




Compiled by the

WATER SUPPLY COMMISSION OF PENNSYLVANIA.

1909

Revised by the

LEGISLATIVE REFERENCE BUREAU

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This appendix contains articles dealing with the creation, organization, power and duties, and administration of the Water Supply Commission, not treated under the law relating to water companies.


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# ARTICLE I.

## HISTORY, CLASSES AND NATURE OF WATER COMPANIES.

### 1. HISTORY.

Water companies were originally formed in Pennsylvania wholly under special acts of the Legislature, which, together with their supplements, constituted the charters of such corporations and contained all of the corporate rights and powers. Subsequently, a general act was passed on March 11th, 1857 (P. L. 77), providing, together with its supplements, for the regulation and general powers of water companies incorporated by special acts and made subject to its provisions. Subsequently the act of March 26th, 1867 (P. L. 44), authorized the incorporation of water companies by the courts of common pleas, and several companies so incorporated are still in existence. The act of February 27th, 1872 (P. L. 20), also authorized the formation of water companies by the courts of Common Pleas of the several counties. While these acts were apparently not repealed by the act of April 29th, 1874, there would be no advantage in forming water companies after that date under said acts. The constitution of 1873 abolished the formation of water companies under special acts, and the act of April 29th, 1874, provided for the formation of water companies under a general act, and also provided for the acceptance of its provisions by any water company incorporated prior to its passage and subject to the provisions of any other act. Where any such company, therefore, has accepted the provisions of the act of April 29th, 1874, it is, as regards its class and powers, to all intents and purposes, a corporation formed under the provisions of the said act of April 29th, 1874.

The act of April 29th, 1874, provided in clause 9 of section 2, under corporations for profit, for the formation of companies "for the supply of water to the public." This clause was amended by the act of May 16th, 1889 (P. L. 226), so as to read "for the supply of water to the public, or the supply, storage or transportation of water and water power for commercial and manufacturing purposes."

The original act of April 29th, 1874, also provided in clause 18 of section 2, for the formation of companies "for the storage and transportation of water, with the right to take rivulets and land and erect reservoirs for holding water." This statement of purpose was amended by the act of May 21st, 1889 (P. L. 259), so as to read "for the storage, transportation and furnishing of water, with the right to take rivulets and land and erect reservoirs for holding water for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission and using of water power therefrom."

A subsequent amendment of July 9, 1901, P. L. 624, added to the language above cited the following:

"And for the creation, establishing, furnishing, transmission and using of water power therefrom."

The Act of June 3, 1911, P. L. 635, further amended paragraph eighteen of section two of the Act of 1874, so as to provide that water companies formed under its provisions should be formed:

"For the creation, establishing, furnishing and transmission for public use of water power therefrom: Provided, that such last named corporations * * * * * shall be compelled to furnish such power for public purposes."

2. CLASSES.

There are now, therefore, three kinds of water companies which may be formed under the laws of Pennsylvania:

1. Corporations for the supply of water to the public.

2. For the supply, storage or transportation of water and water power for commercial and manufacturing purposes.

3. For the storage, transportation and furnishing of water with the right to take rivulets and land and erect reservoirs for holding water for manufacturing and other purposes, and for the creation, establishment, furnishing and transmission for public use of water power therefrom.

It is apparent that the second and third purposes are practically the same, but the powers of the companies formed for such purposes are different. The powers of corporations for the first and second purposes are set out in the thirty-fourth section of the Act of April 29, 1874, P. L. 73, and its amendments. Among these is the power of exercising the right of eminent domain (as subsequently limited by the Act of April 13, 1905, P. L. 152) not only for taking private property, but for occupying highways, etc.

Corporations formed for the first and second purposes are confined to the supplying of water and water power within a single municipality or township.

Water companies formed for the third purpose have only the power enumerated in the said eighteenth paragraph of section two of the Act of 1874, namely, the right to take rivulets and land for the purposes named. The Act of June 12, 1879, P. L. 177, amending clause four of section three of the Act of April 29, 1874, P. L. 73, however, provides, inter alia, as follows:

"That companies organized for any of the purposes set forth in the eighteenth paragraph of the second section of this act * * * * *, and not having for their object the supplying of any village, borough or city with water shall have all the rights, privileges and powers conferred by the said eighteenth paragraph, and the right to take lands, waters or rivulets shall be exercised in the manner provided in the forty-first section of this act."

While the meaning of this clause is rather uncertain in some respects, it is evident that the right of water companies formed for the third purpose above mentioned is to be exercised as provided by the forty-first section of said act.

The difference between corporations formed for the second purpose, and those formed for the third purpose therefore appears to be:

Corporations formed for the first and second purposes may occupy highways and other public property enumerated in the thirty-fourth section of the Act of 1874, but they are confined to furnishing water and water power within a single township or municipality.

Corporations formed for the third purpose are confined in their powers to taking "lands, waters or rivulets," and may not occupy highways or other public property, but they are not apparently confined to furnishing water and water power within any particular district, although it has not been customary in the office of the Secretary of the Commonwealth to grant charters to such companies covering more than a single county.

A kind of water company may also exist by virtue of the provisions of the act of May 17th, 1901 (P. L. 261), that "any person, corporate or otherwise, vested with the franchise of constructing, maintaining and using, for purposes of transportation, canals, or other artificial highways, may, at any time, convert a portion of the whole of the water supply theretofore used for such highways, to the uses of domestic, manufacturing and commercial purposes, and may to this end, from time to time, lease, sell or convey the whole or any portion of the same." (As to the duty of such a company to supply water to the public—see—Spink vs. Schuylkill Navigation Co. et. al., 22 D. R. 1025).

3 NATURE.

Companies for the supply of water to the public are formed for a public purpose and are, therefore, clearly public corporations, with the right of eminent domain and all other rights that attach to public corporations, including an exemption from attachment by mechanics liens; Forster v. Fowler, 60 Pa. 27; Guest v. Merion Water Company, 142 Pa. 610.

So also companies for the supply, storage and transportation of water and water power for commercial and manufacturing purposes are public corporations, incorporated for a public use and invested with the right of eminent domain; Jacobs v. Clearview Water Company, 220 Pa. 388; and are exempt from local taxation; Conoy Township v. York Haven Power Company, 222 Pa. 319.

Companies formed under clause 18 of section 2 of the act of April 29th, 1874, are by that clause given the right of eminent domain, and it would seem, therefore, that it was the intention of the Legislature to class them as public corporations. It has been held, however, in Peifly v. Mountain Water Supply Company, 214 Pa. 340; in Jacobs v. Clearview Water Supply Company, 220 Pa. 388; and in Raystown Water Company v. Brumbangh, 246 Pa. 225, 254 Pa. 215; that corporations of this class are presumably corporations for a private use and cannot constitutionally be vested with the right of eminent domain. The burden would, therefore, be upon a corporation of this class to show that its purpose was in fact a public one, and in event of its failure to show this it would be classed as a private corporation. But see section 1 and the Act of June 3, 1911 (P. L. 635), which is the last amendment of clause 18, section 2, Act of April 29th, 1874 (P. L. 73).

# ARTICLE II.

## INCORPORATION.

### 4 ACTS PROVIDING FOR INCORPORATION.

Aside from the right given to canal companies to exercise the privileges of water companies, as provided in the Act of May 17, 1901 (P. L. 261), water companies may be incorporated under the following clauses of section two of the Act of April 29th, 1874 (P. L. 73).

The supply of water to the public, or the supply, storage or transportation of water and water power for commercial and manufacturing purposes. Paragraph 9, section 2, Act of April 29th, 1874 (P. L. 73), as amended by section 1, Act of May 16, 1889 (P. L. 226).

The carrying on of any mechanical, mining, quarrying or manufacturing business, including all the purposes covered by the provisions of the acts of the General Assembly, entitled "An act to encourage manufacturing operations in this Commonwealth," approved April seventh, one thousand eight hundred and forty-nine, entitled "An act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes," approved July eighteenth, one thousand eight hundred and sixty-three, and the several supplements to each of said acts, including the incorporation of grain-elevators, storage-house and storage-yard companies, also including companies for the storage, transportation and furnishing of water, with the right to take rivulets and land and erect reservoirs for holding water, for manufacturing and other purposes, and for the creation, establishing, furnishing and transmission for public use of water power therefrom: Provided, That such last named corporations, heretofore or hereafter incorporated, shall be compelled to furnish such power for public purposes; the construction of dams in any stream, and the driving and floating of sawlogs, lumber and timber on and over any streams, not exceeding thirty-five miles in length from their source, by the usual methods of driving and floating logs, timber and lumber on streams, and so as not to obstruct the descending navigation by rafts and boats; also including the manufacturing and brewing of malt liquors; and also including companies for the transaction of any lawful business not otherwise specifically provided for by act of Assembly: Provided, however, That no corporation shall be chartered under this amendment with the authority to transact more than one kind of business, which must be set forth in the charter. Paragraph 18, section 2, Act of April 29th, 1874 (P. L. 73), as amended by section 1, Act of June 3, 1911 (P. L. 635).

See sections 1 and 2.

### 5 INCORPORATORS.

"The charter of an intended corporation must be signed by five (two) or more persons, three (one) of whom, at least, must be citizens of this Commonwealth:" Act of April 29th, 1874, section 3.

"Corporations for profit, embraced within corporations of the second class, defined in section two (2), and the various supplements to said section two (2), of the act to which this is a supplement, may be formed, under the provision of said act, by voluntary association of three or more persons, and the charter of an intended corporation must be subscribed by two or more persons, one of whom, at least, must be a citizen of this Commonwealth. All corporations formed under the provisions of the several supplements of section two (2) of the act of April twenty-ninth, one thousand eight hundred and seventy-four, by the voluntary association of three or more persons, and the charter of said corporations having been subscribed by not less than two persons, one of whom was a citizen of this Commonwealth and in which charters have been granted by the Governor of the Commonwealth of Pennsylvania, be and the same are hereby ratified and confirmed, to the same extent as though the said several supplements to the act of April twenty-ninth, one thosuand eight hundred and seventy-four, had been a part and parcel of the original section two (2) of the act of April twenty-ninth, one thousand eight hundred and seventy-four:" Act of May 29th, 1901 (P. L. 326), as amended by Act of April 23rd, 1903 (P. L. 273).

6. CONTENTS OF APPLICATION.

The application for a charter for a water or water power company shall set forth:

"I. The name of the corporation.
II. The purpose for which it is formed.
III. The place or places where its business is to be transacted.
IV. The term for which it is to exist.
V. The names and residence of the subscribers and the number of shares subscribed by each.
VI. The number of its directors and the names and residences of those who are chosen directors for the first year.
VII. The amount of its capital stock, if any, and the number and par value of shares into which it is divided." Act of April 29th, 1874, section 3.

"No application for a charter for a corporation for the supply of water for the public, or for the supply, storage and transportation of water or water power for commercial and manufacturing purposes, or for any other water or water power company, shall be approved by the Governor, nor shall letters patent be issued thereon . . . . unless said application shall contain, in addition to the statements now required to be made, the name of the river, stream, or other body of water, from which it is proposed to take or use water or water power, and, as near as may be, the points on said river, stream, or other body of water, between which said water or water power is proposed to be taken or used:" Act June 7th, 1907, section 1, (P. L. 455).

The application "shall also state that ten per centum of the capital stock thereof has been paid in cash to the treasurer of the intended corporation, and the name and residence of such treasurer shall be therein given:" Act April 29th, 1874, section 3.

The purpose stated in the application must be a single one, and a charter will not be approved "for the supply of water to the public and for the supply, storage and transportation of water and water power for commercial and manufacturing purposes:" in re Sowego Water and Power Company, 16 Pa. C. C. 179.

The statement of the purpose of the corporation should be made in the language of the act, and should not include powers it is intended the corporation shall have: in re Philadelphia Co., 33 Pa. C. C. 428.

In an application for a charter for a water power company intending to generate and supply electric power, the words "with the right to generate electric current and supply the same at any place or places" should not be added: in re Providence Hydro-Electric Company, 27 Pa. C. C. 467.

The application for a charter for the supply of water to the public, or for the supply, storage and transportation of water and water power, must state the town, township, borough, city or district in which it proposes to supply water or water power; in re Perkiomen Water Storage, &c., Company, 13 Pa. C. C. 124.

The district named in the application should not cover more than a single municipality, and words to include territory adjacent thereto should not be added: Bly v. White Deer Mountain Water Company, 197 Pa. 80.

The place where the business of the corporation is to be transacted is the place where its principal office is to be, not where the water or water power is to be supplied: in re Mann Mining Company, 2 Chest. 90. (For further regulations concerning designation of source of supply see section 28).

Under the act of June 7, 1907, (P. L. 455), section 1, the application for a charter for a water company need not state the precise location of a dam or dams proposed to be built. Pa. Power Company v. Public Service Commission, 261 Pa. 211.

## 7. EXECUTION OF APPLICATION.

The application "shall be acknowledged by at least three (two) of the subscribers thereto, before the Recorder of Deeds of the county in which the chief operations are to be carried on, or in which the principal office is situated, and they shall also make and subscribe an oath or affirmation before him to be endorsed on the said certificate, that the statements contained therein are true:" Act April 29th, 1874, section 3.

"From and after the passage hereof, all certificates of association or articles of incorporation may be acknowledged and sworn to before a notary public of the Commonwealth of Pennsylvania, in the same manner, and with like force and effect as though acknowledged and sworn to before the recorder of deeds of the proper county:" Act April 15th, 1891, (P. L. 18).

Since the passage of the act of May 29th, 1901, (P. L. 326), the application may be acknowledged and sworn to by two persons; Peoples Gas Light & Fuel Company, 6 Dauph. 60.

## 8. NOTICE.

"Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation, printed in the proper

county, for three weeks, setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor:" Act April 29th, 1874, (P. L. 73), section 3.

"Hereafter all notices required to be published by authority of law in cities of first and second class in this Commonwealth shall, in addition to the publication thereof in any newspaper of general circulation printed in the English language as provided by law, be published in a daily newspaper published in the German language, and prices shall not exceed usual advertising rates of such newspaper shall be published in the county in which the said notices are required to be advertised: Provided, That publication in such German newspaper shall be made subject to the same stipulations and regulations as are imposed on the newspapers published in the English language for like service:" Act July 2nd, 1895, (P. L. 426).

"In order to avoid existing confusion, arising from the fact that publication of notices in connection with the formation, amendment, increase or reduction of capital stock, conduct of business, merger, transfer of franchises, or dissolution of corporations, joint-stock companies, limited partnerships, and partnership associations are not required to be published in any designated paper in any county, and to serve the convenience of members of the bar and others interested in such notices, hereafter in all cases, where publication is or may be required by law in connection with the formation, amendment, increase or reduction of capital stock, conduct, of business, merger, transfer of franchises, or dissolution of corporations, joint-stock companies, limited partnerships, or partnership association, such notice as is or may be required, as aforesaid, shall be published in the legal journal, if any, of the proper county, in which court notices usually appear, which journal for such purposes shall be deemed a newspaper of general circulation; Provided, That the rates charged for such publication shall not be in excess of the usual and current rates charged by such newspapers:" Act May 3, 1909, (P. L. 386).

Twenty-one days must elapse between the first insertion of the notice and the date upon which the application is made: Shamokin Coal Co., Op. Atty. Gen., 1895-96, P. 304.

Trade journals are not newspapers of general circulation within the meaning of the act: New Gas Light Co., 1 Dauph. 22.

Except where publication in a German newspaper is required, such a newspaper is not within the meaning of the act: Chartiers Ferry Co., Op. Attorney Gen. 2. Chest. 91.

If publication is made in the Legal Intelligencer it must also be made in two newspapers of general circulation: Enterprise Mutual Benefit Association, 10 Phila. 380, 32 Leg. Int. 82; Application for for Charter, 33 Leg. Int. 158.

9. GRANTING OF CHARTERS.

"The said certificate, accompanied with proof of publication of notice as hereinbefore provided, shall then be produced to the Governor of this Commonwealth, who shall examine the same, and if he find it to be in proper form and within the purposes named in the second class, specified in the foregoing section, he shall approve thereof and endorse his approval thereon, and direct letters patent to issue in the usual form, incorporating the subscribers and their asso-

ciates and successors into a body politic and corporate, in deed and in law, by the name chosen, and the said certificate shall be recorded in the office of the Secretary of the Commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish to the auditor general an abstract therefrom, showing the name, location, amount of capital stock, and name and address of the treasurer of such corporation:" Act April 29th, 1874, (P. L. 73), section 3.

"Hereafter no letters patent shall be issued to any company desiring to be incorporated for the purpose of supplying water to the public, in any community in the Commonwealth, until said application is first submitted to and has received the approval of a majority of the said Water Supply Commission:" Act May 4th, 1905, (P. L. 385), section 5.

"From and after the passage of this act, no application for a charter for a corporation for the supply of water for the public or for the supply, storage and transportation of water and water power for commercial and manufacturing purposes, or for any other water or water power company, shall be approved by the Governor, nor shall letters patent be issued thereon, unless said application is first submitted to, and has received the approval of a majority of the members of The Water Supply Commission of Pennsylvania:" Act June 7th, 1907, (P. L. 455), section 1.

"Upon the approval of the Public Service Commission evidence by its Certificate of Public Convenience, first had and obtained, and not otherwise, it shall be lawful for any proposed public service company—

(a). To be incorporated, organized, or created: Provided, That existing laws relative to the incorporation, organization, and creation of such companies shall first have been complied with, prior to the application to the commission for its Certificate of Public Convenience." Art. III, section 2, Act July 26th, 1913, (P. L. 1374).

Before water-works, for the supply of water to the public, are constructed or extended, the Health Department must approve of the source of supply. See section 28.

An order of the Public Service Commission approving an application for a charter for a water company will not be reversed simply because the proposed new company would be a competitor in a field theretofore exclusively occupied by an older company. Penna. Power Company v. Public Service Commission, 261 Pa. 211.

10. RECORDING APPLICATION.

"The said original certificate, with all of its endorsements, shall then be recorded in the office for the recording of deeds, in and for the county where the chief operations are to be carried on, and from thenceforth the subscribers thereto, and their associates and successors, shall be a corporation, for the purposes and upon the terms named in the said charter:" Act April 29th, 1874, (P. L. 73), section 3.

The corporate existence of a water company dates from the recording of its charter in the county where its "chief operations are to be carried on," and not from the issuance of letters patent. Borough of Braddock v. Penn Water Co., et al, 189 Pa. 379; Armstrong Water Co., v. Reyburn Water Co., 24 Pa. C. C. 13.

# ARTICLE III.

## GENERAL POWERS.

### 11. GENERAL POWERS OF COMPANIES FOR THE SUPPLY OF WATER TO THE PUBLIC, AND COMPANIES FOR THE SUPPLY, STORAGE AND TRANSPORTATION OF WATER AND WATER POWER FOR COMMERCIAL AND MANUFACTURING PURPOSES.

"Companies incorporated under the provisions of this statute for the supply of water to the public . . . . . shall, unless otherwise provided by this act, from the date of the letters patent creating the same, have the powers and be managed, governed and controlled as hereinafter provided:" Act April 29th, 1874, section 34, as amended by section 1, act June 2nd, 1887, (P. L. 310).

"Where such companies shall be incorporated for the supply of water to the public, or for storing and transportation or supply of water and water power for commercial and manufacturing purposes, they shall have power to provide, erect and maintain all works and machinery necessary or proper for raising and introducing into the town, borough, city or district where they may be located a sufficient supply of pure water, or water and water power as aforesaid, and for that purpose may provide, erect and maintain all proper buildings, cisterns, reservoirs, pipes and conduits, for the reception and conveyance of water, or water power, and it shall have power to appropriate so much of the water from the rivers, creeks, canal water-rights and easements, within or without the limits of the city, borough or place in which said company may by its charter be located, as may be necessary for its purposes, and all damage done thereby shall be ascertained, recovered and paid as provided for in the forty-first section of the act to which this is a supplement; and it is further authorized and empowered by itself, its agents, engineers, and workmen, and with its and their tools, carts, wagons, beasts of draught or burden, to enter upon such lands and enclosures, streets, lanes, alleys, roads and highways and bridges, as may be necessary to occupy or to obtain materials for the construction of said works, and to occupy, ditch, and lay pipes through the same, and the same from time to time to repair, subject to such regulations in regard to streets, roads, lanes and other highways and impairing the free use thereof as little as possible, and subject to such regulations as the councils of said borough, town, city or district may adopt in regard to grades or for the protection and convenience of public travel over the same, and if any injury be done to private property the said company shall make compensation therefor in the manner provided for in the forty-first section of this act (See sec. 52.): Provided, That this act shall not apply to private springs or private water supplies:" Act April 29th, 1874, section 34, clause 2, as amended by Act May 16th, 1889, (P. L. 226).

The right to appropriate water from rivers, creeks, canal water-rights and easements contained in the above quoted section are not conferred upon water companies created since the passage of the act

of April 13th, 1905, (P. L. 152). (See section 44). For definitions of "town," "village" and "district" see Gring v. Sinking Spring Water Company 20 D. R. 891.

A provision in the certificate of incorporation of a water company granting power to supply water in "adjacent territory" is wholly inoperative and should not have been approved by the Governor. Bly v. White Deer Mountain Water Company, 197 Pa. 80.

Electricity generated by a water power company may be distributed anywhere. See section 12, Par. b. c.

See also sections 15 and 16.

## 12. ADDITIONAL POWERS GIVEN TO COMPANIES FOR THE SUPPLY, STORAGE AND TRANSPORTATION OF WATER AND WATER POWER FOR COMMERCIAL AND MANUFACTURING PURPOSES.

a. Power to determine character and design of works.

"Corporations heretofore or hereafter incorporated under the Act of Assembly, entitled 'An act to provide for the incorporation and regulations of certain corporations,' approved April twenty-ninth, one thousand eight hundred and seventy-four, and the supplements thereto, for the supply, storage or transportation of water and water power for commercial and manufacturing purposes, be and the same are hereby authorized and empowered to determine the character, design and construction of the works and the use to be made of the water and water power of such companies, in order that the same may be supplied to the public to the best advantage, and by themselves their agents, engineers and workmen, cause to be located, constructed, maintained, repaired and operated under the law and supplements to which this is a further supplement, the said works, and all machinery, dams, buildings, cisterns, races, canals, water-ways, reservoirs, pipes, conduits, lines, plants, apparatus, fixtures and appliances deemed necessary, requisite and proper for said purposes, and it shall and may be lawful for such corporations from time to time to contract with any individual or corporation of this or any other state for the construction, operation, use and maintenance of their works or any part thereof as aforesaid, and to mortgage their said property, real, personal and mixed, and franchises to any person or corporation of this State or elsewhere, either directly or as trustee, to secure the payment of such indebtedness as may be incurred or created for the purpose of constructing and erecting the said works, or as a guaranty for the faithful performance of contracts and covenants on the part of such water and water power company to be performed, including the guaranty of the payment of the bonds and interest thereon of any other corporation, party to such contract, and the stock in any company incorporated for the purposes named in this act may be owned and held by corporations of this or other States of the United States:" Act July 2nd, 1895, (P. L. 432).

b. Power to generate and distribute electric power and current.

"Corporations organized, or hereafter to be organized, under the laws of this State for the purpose of supplying water power to the public, and other corporations owning or controlling water power, may develop electric power for commercial purposes by means of water power, and shall have authority to supply current and power

to the public, individuals, firms and corporations at such prices as may be agreed upon, and shall have authority to make, erect and maintain the necessary buildings, machinery and apparatus for developing power and current, and to distribute the same to any place or places with the right to enter upon any public road, street, lane, alley or highway for such purposes, and to alter, inspect and repair its system of distribution: Provided, That no such company shall enter upon any street or alley in any city, borough or township of this Commonwealth, until after the consent to such entry of the councils of the city or borough or supervisors of the township in which such street or alley may be located shall have been obtained:" Act of July 2nd, 1895, (P. L. 425).

A water company organized under the provisions of the act of 1874 as amended by the act of 1889 has authority under the act of 1895 to erect a dam for the purpose of generating electricity. In such a case it is immaterial where the electricity so generated is to be used: Brumbaugh v. Raystown Water Power Co., 254; Pa. 215. The corporate activity of a company generating electric current by water power is no longer limited to the territory described in the charter: Ryder v. York Haven Water & Power Co., 26 D. R. 14; In re Application of York Haven Water & Power Co., 5 Dept. Rep. 1853.

c. The Public Service Commission has jurisdiction as to service.

"The commission shall have general administrative power and authority, as provided in this act, to supervise and regulate all public service companies doing business within this Commonwealth.

Said power and authority shall include the power to inquire into and regulate the service * * * * * * ; the making of repairs, alterations, and improvements in and to such service; as shall be reasonably necessary for the accommodation or safety of its patrons, employes, and the public * * * * * * ."

Art. V., sec. 1, Act of July 26, 1913, P. L. 1374.

"Upon the approval of the commission evidenced by its Certificate of Public Convenience, first had and obtained, and not otherwise, it shall be lawful for any proposed public service company * * *

(b) To begin the exercise of any right, power, franchise, or privilege under any ordinance, municipal contract, or otherwise."

Art. III, sec. 2, Act of July 26, 1913, P. L. 1374.

## 13. GENERAL POWERS OF COMPANIES FORMED UNDER CLAUSE 18, SECTION 2, ACT OF APRIL 29TH, 1874.

Clause 18 of section 2 of the act of April 29th, 1874, as finally amended by the act of May 21st, 1889, (P. L. 259), the act of July 9th, 1901, (P. L. 624) and the act of June 3rd, 1911, (P. L. 635), providing for the formation of water companies of this class, also furnishes the statutory provision for their general powers. It provides that companies may be formed "for the storage, transportation and furnishing of water, with the right to take rivulets and land and erect reservoirs for holding water for manufacturing and other purposes, and for the creation, establishing, furnishing and transmission for public use of water power therefrom: Provided, That such last named corporation * * * * * shall be compelled to furnish such power for public purposes."

Clause 4, section 34 of the act of April 29th, 1874, as amended by the act of June 12th, 1879, (P. L. 177) also provides "Companies or-

ganized for any of the purposes set forth in the eighteenth clause of the second section of this act whether such companies shall have been organized under any special act of assembly or under the general acts, in said eighteenth clause enumerated, and not having for their object the supplying of any village, borough or city with water, shall have all the rights, privileges and powers conferred by the said eighteenth clause."

It would seem that companies of this class had the power to develop electric power for commercial purposes by means of their water power conferred by the act of July 2nd, 1895, (P. L. 425), upon "corporations organized * * * * * for the purpose of supplying water power to the public, and other corporations owning and controlling water power." (See section 12 B).

A water company organized under the provisions of the act of 1874 as amended by the act of 1889, has authority, under the act of July 2nd, 1895, (P. L. 432) to erect a dam for the purpose of generating electricity: Brumbaugh v. Raystown Water Power Comapny 254 Pa. 215.

## 14. POWERS OF CORPORATIONS ACCEPTING THE CONSTITUTION AND THE PROVISIONS OF THE ACT OF APRIL 29, 1874.

"Any corporation or corporations for any of the purposes named and covered by the provisions of this act, heretofore created by any special act or acts, or in existence under the provisions of any general law of this Commonwealth, shall be entitled to all the privileges, immunities, franchises and powers conferred by this act upon corporations to be created under the same, upon filing in the office of the Secretary of the Commonwealth a certificate of a single corporation, or a joint certificate, if two or more corporations, incorporated for and doing the same kind of business, under the seal or seals of said corporation or corporations, accepting the provisions of the constitution and of this act, duly authorized by a meeting of stockholders called for that purpose; and upon such acceptance and approval by the Governor, he shall issue letters patent to said corporation, or if two or more corporations, to said corporations as one corporation, under such name as shall be designated by said corporation or corporations in said single or joint certificate, together with the amount and capital, number of shares and par value thereof as shall be designated by said corporation or corporations in said certificate: Provided, That where two or more corporations shall make a joint certificate as aforesaid, and letters patent shall be issued to said new corporation, said corporations shall thenceforth be deemed, held and taken to be merged and consolidated, and be subject to all the limitations and liabilities of this act." Part of section 26, April 29th, 1874, (P. L. 73), as amended by section 6, act of April 17th, 1876 (P. L. 30).

The incorporation of any association of persons for the purpose named in this act, or accepting the same, shall be held and taken to be of the same force and effect as if the powers and privileges conferred, and the duties enjoined, had been conferred and enjoined by special act of the legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it

had been created by special charter, and no modification or repeal of this act shall affect any franchise obtained under the provisions of the same. Section 25, Act of April 29th, 1874, (P. L. 68).

When a water company on September 1, 1893 accepted the provisions of the constitution and of the Act of April 29th, 1874, (P. L. 73), and its supplements, it put itself on par with like water companies chartered immediately subsequent to the passage of said act. It lost its exclusive franchise granted it by its charter, but it gained, in lieu thereof, the exclusive privilege given to water companies by clause 3, section 34, of said Act of April 29th, 1874 (P. L. 73), but, at the same time it rendered itself amenable to clause 7, of the same section of the same act, which provides a method whereby municipalities can purchase the plants of water companies.

The fact that the water company accepted the provisions of the constitution and of the act of April 29th, 1874, after the passage of the act of June 2nd, 1887, abrogating the special privileges of water companies, does not deprive the company of the exclusive privileges of the act of 1874. The legislative intent in the passage of the acceptance section of the act of 1874 was to put all old corporations accepting the constitution on a par with corporations chartered immediately after its passage, say on April 30th, 1874: Tyrone Gas & Water Company v. Borough of Tyrone, 195 Pa. 566.

A water company incorporated by private act, which has accepted in 1888 the provision of the constitution and the act of April 29th, 1874, (P. L. 73), acquires under the act of May 16th, 1889, (P. L. 226), amending the act of 1874, conferring upon water companies additional powers, the right of eminent domain, in the exercise of which it may appropriate so much of the waters of a river, as may be necessary for its corporate purposes, and does not by accepting the provisions of the act of 1874, lose or surrender its franchise to supply five boroughs, designated in its charter, and was not thereby required to confine its supply of water to one of the five boroughs mentioned: Blauch v. Johnstown Water Company, 247 Pa. 71; Croyle v. Johnstown Water Company 259 Pa. 484.

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## ARTICLE IV.

### TERRITORIAL RIGHTS.

#### A. TERRITORY IN WHICH WATER MAY BE SUPPLIED.

##### 15. COMPANIES FOR THE SUPPLY OF WATER TO THE PUBLIC, AND COMPANIES FOR THE SUPPLY, STORAGE AND TRANSPORTATION OF WATER AND WATER POWER FOR COMMERCIAL AND MANUFACTURING PURPOSES.

The act of April 29th, 1874, as amended by the act of May 16th, 1889, (P. L. 226), provides that water and water power companies shall have power to supply water in "the town, borough, city or dis-

trict where they may be located." Under this language it has been held that such water company is limited in the territory which it may supply to a single municipal division—a city, borough or township or a part thereof. Two or more municipalities, or a municipality and "adjacent" territory, however, may not be joined: Bly v. White Deer Mountain Water Co., 197 Pa. 80.

But a water company formed under the act of 1874 for the purpose of supplying water to residents of a "village" and territory adjacent thereto has authority to supply water to residents of a district within the township in which the village is located, made up of the village and territory adjacent thereto: Gring v. Sinking Spring Water Co., 20 D. R. 891.

A riparian property owner on a stream from which a water company takes its supply has no standing under the act of June 19th, 1871, (P. L. 1360), to restrain such company from delivering water within the limits of the township it is authorized to supply to a railroad company, though the railroad company carries the water so received beyond the limits of such township in its own pipes; Bland v. Tipton Water Co., 222 Pa. 285. Also Fahey v. Kennett Square Borough, 42 Pa. Super. Ct. 460.

Nor has a city the right to restrain a water company from so delivering water within the limits of the township it is authorized to supply to a railroad company, and carried by the railroad company in its own pipes into such city for its own use, even though the city has the exclusive privilege of supplying its inhabitants with water: Harrisburg v. Pennsylvania Railroad Co. et al., 33 Pa. C. C. 641.

A water company incorporated by a private act accepting the constitution and the provisions of the act of 1874 does not lose or surrender its franchise to supply five boroughs, designated in its charter, and was not thereby required to confine its supply of water to one of the five boroughs mentioned therein: Blanch v. Johnstown Water Company 247 Pa. 71; Croyle v. Johnstown Water Company, 259 Pa. 484.

Where the taking of water by a water company is mainly for the purpose of supplying citizens within the proper territorial limits of the company, the furnishing of a small supply to persons outside of the limits is a mere incident of the main purpose and the taking will not be enjoined. Where the taking is to furnish a territory beyond the original charter limits, such question can be inquired into only by the Commonwealth, and not by a bill in equity by a private person: Croyle v. Johnstown Water Company, 259 Pa. 484; Mier v. Citizens Water Company, 250 Pa. 536; Blauch v. Johnstown Water Company, 247 Pa. 71.

But in Bly v. White Deer Mountain Water Company, 197 Pa. 89, the court held that a land owner who is threatened with injury, because of the excessive appropriation of water by a water company, has a standing under the act of June 19th, 1871, (P. L. 1360), in equity for an injunction to restrain such act. Likewise, in Raystown Water Power Company v. Brumbaugh, 246 Pa. 225, the court held a land owner may raise the question of the water company's right to condemn land unnecessarily, under the act of June 19th, 1871, (P. L. 1360), and without applying to the Attorney General to institute the proceedings.

## 16. EXTENSION OF TERRITORY.

"Any company heretofore incorporated or hereafter to be incorporated for the purpose of supplying water to the public in any town, borough or city, may, upon the written request of the owners of a majority of the lots of land in any tract or district adjacent to such town, borough or city, have power and authority to extent its plant or works for the supply of water into such tract or district, with such rights and subject to such duties within such tract or districts as may have been conferred and imposed by its charter, within the town, borough or city therein designated: Provided, That such written request shall contain a description of such tract or district, and be recorded in the office of the recorder of deeds in and for the proper county, and thereupon a certified copy of the record of such proceedings as appears of record in the office of the recorder of deeds shall forthwith be transmitted to and filed in the office of the Secretary of the Commonwealth:" Act May 21st, 1901, (P. L. 270).

The act of May 21st, 1901, (P. L. 270), does not enable a water company, chartered under the act of April 29th, 1874, (P. L. 73), to supply one municipal division, to secure, by petition, the right to supply the whole of another municipal division. The act provides for extension of service to an adjacent "tract or district," which does not mean another municipality: Water Companies, 25 D. R. 571.

The right to supply a district adjacent to the charter territory of a water company cannot be secured merely by a petition of residents in such district, under the act of May 21st, 1901, (P. L. 270): Benscreek Water Company, 44 Pa. C. C. 160.

The act of May 28th, 1907, (P. L. 278), (See Par. 25), requiring a water company obtaining its water supply, or any part thereof, from a source lying within the corporate limits of any municipality, city, borough or township in the Commonwealth to furnish such municipality and the inhabitants thereof with water, would seem to operate as an extension to the territory of a water company which procured its supply from a point without the district which it was incorporated to supply.

It would also seem that the acts authorizing the merger and consolidation of two or more water companies, and the purchase by one water company of the property and franchise of another, would operate as an extension of the territory in which the company so formed by merger and consolidation, or in which the company so purchasing the property and franchises of another water company, would be authorized to supply water: Greensburg Borough v. Westmoreland Water Company, 240 Pa. 481 (See section 12 c).

## 17. COMPANIES FORMED UNDER CLAUSE 18, SECTION 2, ACT APRIL 29TH, 1874.

Companies formed under clause 18 of section 2 of the act of April 29th, 1874, are not required to confine their operations to a single city, borough or district: In re Portland Water and Power Co., Op. Atty. Gen., 1903-04, p. 34.

## B. SOURCE OF SUPPLY AND LOCATION OF WORKS.

### 18. SOURCE OF SUPPLY OF WATER.

Section 34, of the act of April 29th, 1874, as amended by the act of May 16th, 1889, (P. L. 226), provides that companies formed under its provisions "shall have power to appropriate so much of the water from the rivers, creeks, canal water-rights and easements within or without the limits of the city, borough or place in which said company may, by its charter, be located as may be necessary for its purposes."

The act of April 13th, 1905, (P. L. 152), took away the right to appropriate waters conferred by the act of May 16th, 1889, (P. L. 226), but the right to go outside of the city, borough or district in order to procure the supply remains.

### 19. LOCATION OF WORKS.

Under the provisions of the act of May 16th, 1889, (P. L. 226), a water company may locate its works, and condemn the land therefor, outside of the city, borough or district to be supplied: Keller v. Riverton Water Company, 161 Pa. 421.

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# ARTICLE V.

## EXCLUSIVE PRIVILEGES.

### 26. EXCLUSIVE PRIVILEGE GRANTED.

"The right to have and enjoy the franchises and privileges of such corporation within the district or locality covered by its charter shall be an exclusive one; and no other company shall be incorporated for that purpose until the said corporation shall have from its earnings realized and divided among its stockholders during five years a dividend equal to eight percentum per annum upon its capital stock:" Act April 29th, 1874, section 34, clause 3. (See section 21).

This exclusive privilege is possessed by those companies that were incorporated prior to the passage of the act of June 2nd, 1887, (P. L. 310); and also by those companies that were incorporated before the passage of the act of April 29th, 1874, (P. L. 73), and later accepted its provisions and the provisions of the Constitution of 1874.

Where a water company was incorporated by special act prior to April 29th, 1874, with an exclusive privilege, and accepted the act of April 29th, 1874, subsequently to the passage of the act of June 2nd, 1887, it acquired the exclusive privilege granted by clause 3 of section 34 of the act of April 29th, 1874. Where such a company has a contract expressed or implied with a borough to furnish water for fire protection, the borough has no power, after the company has accepted the constitution and act of 1874, to erect a water-works of its own: Tyrone Gas & Water Co. v. Borough of Tyrone, 195 Pa. 566.

The exclusive privileges granted by clause 3 of section 34 of the act of April 29th, 1874, do not exist as against individuals who have been given authority by a municipality to lay pipes in the streets and supply the inhabitants with water: Freeport Water Co., v. Prager, 129 Pa. 605, nor as against a municipality: Lehigh Water Co.'s App. 102 Pa. 515.

Where water is supplied by a water company to a railroad company within the limits of the district of the water company, and by the railroad company piped out into an adjoining district, a city, there is no infringement of the exclusive privilege which the city has to furnish its inhabitants with water: Harrisburg v. Pennsylvania Railroad Co., et al., 33 Pa. C. C. 641.

## 21. EXCLUSIVE PRIVILEGE TAKEN AWAY.

Clause 3 of section 34 of the act of April 29th, 1874, (P. L. 73), was amended on June 2nd, 1887, (P. L. 310) and again on June 24th, 1895, (P. L. 267). These amendments eliminated the provision giving an exclusive privilege to water companies.

Section 3 of the act of June 2nd, 1887, (P. L. 310), amended clause 3 of section 34 of the act of April 29th, 1874, so as to give exclusive privileges only to corporations for the manufacture and supply of gas for light only to the public, and this by implication repeals the provisions of the statute granting exclusive privileges to water companies: Luzerne Water Co. v. Toby Creek Water Co., 148 Pa. 568; Center Hall Water Co. v. Center Hall Borough, 186 Pa. 74; Boyertown Water Co. v. Boyertown Borough, 200 Pa. 394.

Companies formed, therefore, prior to June 2nd, 1887, and which have not realized and declared dividends equal to eight per centum per annum for a period of five years now have exclusive privileges, but companies formed subsequently to that time do not have such exclusive privileges.

A water company chartered in March, 1887, but which failed to record its charter in the county where its operatinos were to be carried on until May 3rd, 1888, did not acquire an exclusive privilege: Borough of Braddock, v. Penn. Water Co., et al., 189 Pa. 379.

Where a water company has entered a borough under a municipal ordinance and laid its pipes in the streets and continues to furnish water according to the terms of its contract with the borough, the company cannot be evicted before the end of the term, even if it was incorporated subsequent to the act of June 2nd, 1887, (P. L. 310), and does not have an exclusive franchise: Penn Water Co., v. Pittsburgh, 226 Pa. 624.

Where a water company enters upon the borough streets to furnish water to the inhabitants of a borough, without any inducement from the municipal authorities, the borough is not thereby precluded from subsequenly furnishing its own supply of water to the inhabitants: Water Co. v. Tarentum Borough, 230 Pa. 148.

A contract between a water company and a borough to furnish water to the inhabitants of the borough cannot be implied from the acts of the company, and where there is no express contract for that purpose the borough cannot be enjoined from erecting its own waterworks to supply its inhabitants: City Water Co. v. Bethlehem Borough, 231 Pa. 454.

### 22. FORFEITURE OR EXCLUSIVE PRIVILEGES.

Clause 3 of section 34 of the act of April 29th, 1874, conferring exclusive privileges upon water companies incorporated before the passage of the act of June 2nd, 1887, provides that such privilege shall be exclusive until the company "shall have from its earnings realized and divided among its stockholders during five years a dividend equal to eight per centum per annum upon its capital stock." The realizing and dividing of such dividend, therefore, forfeits, the exclusive privilege of the company: Phillipsburg Water Co. v. Citizens Water Co., 18 Pa. C. C. 625, affirmed in 189 Pa. 23.

In computing such dividends the capital stock is to be taken at the amount paid in without considering increases of capital made from earnings, but it is immaterial whether the earnings are paid in cash or in stock: Phillipsburg Water Co. v. Citizens Water Co., 18 Pa. C. C. 625.

A water company incorporated prior to the passage of the act of June 2nd, 1887, which has paid dividends at the rate of ten per cent. per annum for twenty years, has no exclusive privilege to supply water in a borough: Dorrance v. Bristol Borough, 224 Pa. 464.

### 23. EFFECT OF ANNEXATION UPON EXCLUSIVE PRIVILEGE.

When a borough by contract has given a water company the exclusive privilege of supplying water, and the company has laid pipes and supplied the inhabitants of such borough, the fact that the borough was subsequently annexed to a city does not give the city the right to lay pipes and supply water within the territory formerly included within the borough, and the water company may restrain the city from doing so: Pennsylvania Water Works Co. v. Pittsburgh, 56 Pitts. 177.

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## ARTICLE VI.

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### DUTIES WITH REFERENCE TO QUALITY AND QUANTITY OF WATER AND SERVICE.

### 24. MUST FURNISH A SUFFICIENT QUANTITY OF PURE WATER.

The proviso in clause 3 section 34 of the act of April 29th, 1874, (P. L. 73) as amended by acts of June 2nd, 1887, (P. L. 310) and June 24th, 1895, (P. L. 267), made it a duty of a water company to furnish pure water and authorized any citizen to "make complaint of impurity or deficiency in quantity, or both, to the court of common pleas of the proper county * * * * * *." This provision was extended to all water companies by the act of June 10th, 1881, (P. L. 112).

This original proviso in the act of 1874 was repealed by the Public Service Company act of July 26th, 1913, (P. L. 1374), which contains the following:

"It shall be the duty of every public service company—

(a). To furnish and maintain such service, including facilities, as shall in all respects be just, reasonably adequate, and practically sufficient for the accommodation and safety of its patrons, employees, and the public, and in conformity with such reasonable regulations or orders as may be made by the commission." Art. II, section 1, Act of July 26, 1913, (P. L. 1374).

25. THE PUBLIC SERVICE COMMISSION HAS POWER AND AUTHORITY OVER DISPUTES AS TO THE QUANTITY OR QUALITY OF WATER FURNISHED.

"The commission shall have general administrative power and authority, as provided in this act, to supervise and regulate all public service companies doing business within this Commonwealth.

Said power and authority shall include the power to inquire into * * * * * the safety, adequacy, and sufficiency of the facilities, plant, and equipment for the carrying on of their business by said public service companies; the quantity or quality of water, gas, electricity, or light, * * * * * *." Part of section 1, Art. V, Act of July 26, 1913, (P. L. 1374).

26. WHAT CONSTITUTES PURITY.

The water need not be chemically pure, but must be ordinarily and reasonably so. When the company has procured a proper source of supply it is bound to exercise diligence in the effort to preserve the water from pollution and to deliver it to the public in no worse condition than that in which it is taken from the source of supply: Brymer v. Butler Water Co. 172 Pa. 489.

When the water is found to be "wholesome, but not pure," the law has been sufficiently complied with: Commonwealth v. Towanda Water Works, 22 W. N. C. 429.

Ordinarily pure and wholesome water naturally means such as is reasonably clean from dirt and discoloration and odors, reasonably clear from bacteria and coli, or any other infection or contamination which renders the water unfit for domestic use and unsafe and dangerous to individuals. Modern investigation and scientific attainments demonstrate that water from polluted sources can by proper filtration be made reasonably safe and pure, and, therefore, the standard of purity as fixed by the well-recognized authorities must be secured: Peffer v. Pennsylvania Water Co., 221 Pa. 578.

A water company is not complying with the law where the evidence shows that its pipe line was connected with a mill pond into which the sewage of the town was discharged, and that during five years, at periods of low water, and where fire occurred, water from the pond was pumped into the main service lines of the company, and that such water polluted the other water, and frequently rendered it injurious and unwholesome and unfit for drinking or cooking, and even for washing; and the fact that the connection with the pond was maintained under agreement with the borough is immaterial: Commonwealth v. Potter County Water Co., 212 Pa. 463.

## 27. REMEDIES WHEN WATER SUPPLIED IS IMPURE.

In addition to the remedy given, by the act of July 26th, 1913, (P. L. 1374) and its amendments, to individual users of water, by complaint to the Public Service Commission (see section 25) when the water furnished is impure, the Commonwealth may proceed by quo warranto to forfeit the charter of the company: Commonwealth v. Towanda Water Works, 22 W. N. C. 429; Commonwealth v. Potter County Water Co., 212 Pa. 463.

The Commonwealth at the relation of the Attorney General may proceed in equity to restrain an oil operator from polluting with salt, water used by a water company for public supply: Commonwealth v. Russel, et al., 172 Pa. 506.

A water company which has title by purchase may restrain the pollution of a stream caused by an upper riparian owner: Scranton Water Co. v. Hall, 9 Lack. L. N. 80.

A borough which is a user of water may make complaint concerning impurity the same as an individual user: DuBois Borough v. DuBois City Water Works Co., 176 Pa. 430.

When a water company furnishes water unfit for domestic use or steam purposes it may be restrained by the court from collecting water rents, but the court cannot decree that the company must obtain its supply from some other designated point. The company has the option of going out of business or seeking a new source of supply: Brymer v. Butler Water Co., 172 Pa. 489.

A court may, however, where on bill in equity it has found the water to be impure, and enters a decree directing the company to provide pure water, also direct the company to file a statement within a specified time showing what it proposes to do to comply with the law: Peffer v. Pennsylvania Water Co., 221 Pa. 578.

Where a water company for a time has supplied water unfit for consumption, equity will restrain the collection of water rates or the enforcement of penalties for this period: New Castle v. Water Co., 250 Pa. 341.

On question of damages resulting from the furnishing of impure water, see Hohlmeyer v. Water Co., 58 Super. Ct. 63.

## 28. REGULATION BY HEALTH DEPARTMENT.

"Every municipal corporation, private corporation, company, and individual supplying or authorized to supply water to the public, within the State, shall, within sixty days after the passage of this act, file with the Commissioner of Health a certified copy of the plans and surveys of the waterworks, with a description of the source from which the supply of water is derived; and no additional source of supply shall thereafter be used, without a written permit from the Commissioner of Health, as hereinafter provided:" Act of April 22nd, 1905, section 2, (P. L. 260).

"No municipal corporation, private corporation, company, or individual shall construct waterworks for the supply of water to the public within the State, or extend the same, without a written permit to be obtained from the Commissioner of Health if, in his judgment, the proposed source of supply appears to be not prejudicial to the public health. The application for such permit must be accompanied by a certified copy of the plans and surveys for such water-

works, or extension thereof, with a description of the source from which it is proposed to derive the supply; and no additional source of supply shall subsequently be used for any such waterworks without a similar permit from the Commissioner of Health. When application shall be made for a permit, under either of the above provisions of this section, it shall be the duty of the Commissioner to proceed to examine the application without delay and as soon as possible, he shall make a decision in writing; and, within thirty days after such decision, the corporation, company, or individual making such application may appeal to any court of common pleas of the county, and said court shall, without delay, hear the appeal, and shall make an order approving, setting aside, or modifying such decision, or fixing the terms upon which said permit shall be granted. The penalty for failure to file copies of plans, surveys and descriptions of existing waterworks within the time hereinbefore fixed, and for the construction or extension of water works, or for the use of an additional source of supply, without a permit from the Commissioner of Health, shall be five hundred dollars, and further penalty of fifty dollars per day for each day that the works are in operation contrary to the provisions of this act, recoverable by the Commonwealth, at the suit of the Commissioner of Health, as debts of like amount are recoverable by law:" Act of April 22nd, 1905, section 3, (P. L. 260).

"The term 'waters of the State' wherever used in this act, shall include all streams and springs, and all bodies of surface and of ground water, whether natural or artificial, within the boundaries of the State:" Act of April 22nd, 1905, section 1, (P. L. 260).

The Public Service Commission and the Water Supply Commission must approve charter for a water company before it is granted by the State. See section 9.

See sections 6-94-119.

29. DUTY TO SUPPLY MUNICIPALITY IN WHICH SUPPLY IS PROCURED.

"Any water company obtaining its water supply, or any part thereof, from a source lying within the corporate limits of any municipality, city, borough, or township, in this Commonwealth, shall furnish such municipality and the inhabitants thereof with water or otherwise forfeit its right to a sufficient quantity of water, from such source, as will supply the needs of such municipality, city, borough, or township, and the inhabitants thereof:" Act of May 28th, 1907, section 1, (P. L. 278).

30. PENALTY FOR FAILURE.

"Should any water company fail to furnish water to any municipality, city, borough, or township, or the inhabitants thereof, under the conditions described in section one of this act, it shall be the duty of the city or borough council, the commissioners or supervisors of the township, as the case may be, to pass a resolution setting forth the fact that the municipality and the inhabitants thereof are not being served with water, and that they desire the same; a copy of which resolution shall be served on the president, secretary, or attorney of the water company having its source of supply within the corporate limits of the municipality thus affected; whereupon it

shall be the duty of such water company to prepare a statement, setting forth in full its reason for its failure to supply water to the affected district; which statement must also include any plans in contemplation, if there be any, to supply at some future time to such district, stating when such supply may be expected; which statement must be verified by oath or affirmation by the president or secretary of such water company, and filed with the State Water Supply Commission, at Harrisburg, within thirty days from the date of service of the original notice on such water company by the municipality affected.

"Failure on the part of the president or secretary of such water company to file a statement, as above directed, shall be deemed a misdemeanor on their part, and, upon conviction thereof, they shall be sentenced to undergo an imprisonment not exceeding six months, and pay a fine not exceeding one thousand dollars, or either or both, at the discretion of the court. If, in the judgment of the State Water Supply Commission, the reasons filed are of such a character as to indicate that no relief will be given the municipality complaining, in the way of a water supply, within a reasonable time, then said State Water Supply Commission may recommend to the Governor that letters patent be issued and a charter granted to any association of individuals who may legally form a water company, and who may apply for the same, and who will agree, in their application for a charter, to supply water to the municipality, city, borough or township thus affected, and the inhabitants thereof, and for that purpose to have the right to condemn, take, or appropriate a sufficient quantity of water from any source of supply lying within the corporate limits of any municipality, city, borough, or township thus affected, as is adequate to supply the needs of such municipality, city, borough, or township, and the inhabitants thereof: Provided, however, That any municipality, where conditions prevail such as are described in sections one and two of this act, shall have the right, with the consent and approval of the State Water Supply Commission, to condemn, take or appropriate a sufficient quantity of water, from any source of supply lying within the corporate limits of any municipality or municipalities affected, as is adequate to meet the needs of such municipality or municipalities, and the inhabitants thereof, and no damages shall be collected by, or allowed to, any water company for any water appropriated under the provisions of this act:" Act of May 28th, 1907, section 2, (P. L. 278).

## 31. DUTY OF COMPANIES FOR THE SUPPLY, STORAGE AND TRANSPORTATION OF WATER AND WATER POWER FOR COMMERCIAL AND MANUFACTURING PURPOSES.

It is the duty of a company formed for the supply, storage and transportation of water and water power for commercial and manufacturing purposes to supply all citizens of the district in which it is authorized to operate that demand it with water and water power for such purposes: Jacobs v. Clearview Water Supply Co., 220 Pa. 388.

But it cannot be required to do so on the petition of a few applicants who own property of small value in a remote or distant part of the town, with no assurance of receiving an adequate return. No

obligation rests on a company to deliver water except on a contract in such cases: Porter et al., v. Tionesta Water Supply Co., 22 D. R. 410.

The extension of water mains connected with a municipal plant is wholly within the jurisdiction of the borough authoriites: Walter v. Mahaffey, et al., 24 D. R. 954.

It is the duty of a private water company to construct pipe lines and convey water to points of delivery: Sinking Spring Water Co., v. Wyomissing Borough, 22 D. R. 716.

The act of July 26th, 1913, P. L. 1374, Art. V., section 13 provides: " * * * * * * The commission shall also have power, after hearing had upon its own motion, or upon complaint, to require public service companies to make all such repairs, changes, alterations, additions, extensions, and improvements, in and about their facilities and service, as shall be reasonably necessary and proper for the safety, accommodaton, convenience, and service of their patrons, employees, and the public."

See sections 33 and 12 C.

32. DISCRIMINATION IN SERVICE UNLAWFUL.

It is unlawful for any public service company—

"(b). To make or give any undue or unreasonable preference or advantage in favor of or to any person or corporation or any locality, or any particular kind or description of traffic or service, in any respect whatsoever; or to subject any particular person or corporation or locality, or any particular kind or description of traffic or service, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Art. III, section 8, Act of July 26, 1913, (P. L. 1374).

See section 33.

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## ARTICLE VII.

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### RATES.

33. THE PUBLIC SERVICE COMMISSION HAS JURISDICTION AS TO RATES AND SERVICE.

"The commission shall have general administrative power and authority, as provided in this act, to supervise and regulate all public service companies doing business within this Commonwealth.

Said power and authority shall include the power to inquire into and regulate the service, rates, fares, tolls or charges of any and all public service companies including individual and joint rates: * * * * * the making of repairs, alterations, and improvements in and to such service; as shall be reasonably necessary for the accommodation or safety of its patrons, employees and the public; * * * * * the safety, adequacy, and sufficiency of the facilities, plant, and equip-

ment for the carrying on of their business by said public service companies; the quantity or quality of water, * * * * * or power, supplied; and, as specifically provided in this act, the issuing of stocks, trust certificates, bonds, notes or other evidences of indebtedness or other securities by public service companies." Art. V, section 1, Act of July 26th, 1913, (P. L. 1374).

So much of clause 7, section 34, of the act of April 29th, 1874, (P. L. 73) as conferred upon the courts, the power to determine questions relating to the reasonableness or unreasonableness of water rates has been repealed by the act of July 26th, 1913, (P. L. 1374) which conferred this power upon the Public Service Commission: Bellevue Boro. v. The Ohio Valley Water Co.; 245 Pa. 114.

On an appeal from an order of the Public Service Commission fixing a schedule of rates to be charged by a water company, the Superior Court cannot inquire into the wisdom or expediency of the order: Ben Avon Boro. v. Ohio Valley Water Co., 260 Pa. 289.

On an appeal from the order of the Public Service Commission fixing a schedule of water rates, the Superior Court will not disturb the findings of the commission when there is sufficient evidence to support such findings, even if the conclusion of the court differ from the conclusion of the commission: Beaver Valley Water Co. v. The Public Service Commission, 71 Super. Ct. 43.

A water company cannot collect increased rates from a borough pending approval of the public service commission. Surburban Water Co., v. Boro., 67 P. L. J. 265; 10 M. L. R. 233.

The Public Service Commission has no authority to regulate the erection of dams or the development of the water power resources of the State; that is a matter within the jurisdiction of the Water Supply Commission: Pa. Power Company v. Public Service Commission, 261 Pa. 211.

See sections 34-35-36-37 and 38.

## 34. DUTIES OF WATER COMPANIES.

"It shall be the duty of every public service company—

(b). To render and furnish all such service at prices, charges, rates, tolls, fares, or compensation that shall be just and reasonable, and in conformity with such reasonable regulations or orders as may be made by the (Public Service) Commission." Art. II, section 1, Act of July 26, 1913, (P. L. 1374).

Rates of a water company must be reasonable, but a system of charges that yield only sufficient income to maintain the plant, pay fixed charges and operating expenses, provide a suitable sinking fund for the payment of indebtedness, and pay a fair profit to the stockholders, is not unreasonable and will not be set aside by the courts: Brymer v. Butler Water Co.; 179 Pa. 231.

Where the total income of a water company amounted to about $7,000 from a population of 6,000, a demand of $3,000 for fire hydrants was reduced to $1,100.00: Leechburg Borough v. Leechburg Water Works Co., 219 Pa. 263.

In an action by a water company against a customer to recover for water supplied, the record of the water meter is not conclusive upon the defendant, although the company offers proof that the meter was of standard design, properly made and duly tested after the dispute with the defendant had arisen; Scranton Gas & Water Co., v. Sturgess 47, Pa. Super. Ct. 203.

Where the ordinance of a borough grants to a water company a franchise to lay and maintain water pipe lines "for a period of ten years or until such time as said works may be purchased by said borough," the duration of the franchise is uncertain and indeterminate as to time. The acceptance by a company of such an ordinance will not estop it from advancing its rates within a period of ten years, if it appear that such advance does not amount to more than a reasonable rate: Mt. Union Boro. v. Mt. Union Water Co., 256 Pa. 516; Turtle Creek Borough v. Penna Water Co., 243 Pa. 415. And this is permissible even though the contract is for a definite period: Leiper v. Balto. & Phila. Railroad Co., et al., 262 Pa. 328. Ordinance contracts may be changed or entirely annulled by subsequent legislation: Boro of East Pittsburgh v. Penna Water Co., 5 Dept. Rep. 1758.

A contract between a water company and a borough specifying that certain rates shall be charged the borough and its inhabitants, unlimited by its terms as to time cannot be enforced indefinitely and the water company is not thereby precluded from raising its rates, if its necessities so require.

So much of clause 7, section 34 of the act of April 29th, 1874, (P. L. 73), as conferred upon the courts the power to determine the reasonableness of water rates, has been repealed by the act of July 26th, 1913, (P. L. 1374), which conferred this power upon the Public Service Commission: Bellevue v. Ohio Valley Water Co., 245 Pa. 114.

The presumption is that the rates fixed by the schedule of a water company are reasonable, and the burden of showing the contrary is on the party who alleges it: Mechanicsburg Boro. v. Gas and Water Co., 246 Pa. 232.

Where a water company and a borough agree on certain fixed rates, and no provision is made for a minimum rate, the court may reform the contract to meet certain changed conditions and circumstances, and allow increased rates so as not to work a confiscation of the company's property: Wilkinsburg Borough v. Water Co., 56 Pitts. 135.

Water rates established by a court of equity under the act of April 29th, 1874, (P. L. 73), section 34 must not be confiscatory and must be such as to yield a fair return upon a just valuation of the plant: Turtle Creek Boro. v. Penna. Water Co., 243 Pa. 401.

See sections 33, 35, 36, 37, and 38.

"(d). Whenever and in the form required by the commission to file with the commission tariffs and schedules, showing prices, charges, rates, fares, tolls or other compensation asked, demanded, or received for any service rendered or furnished by said company; * * * * * it shall be the duty of every public service company to post and publish such tariffs and schedules, * * * * * in every office or station of said public service company open to the public, where payments are made by * * * * * consumers, users, or patrons, in such manner, form and place in such office or station as to be readily accessible, and so that the said tariffs and schedules may be conveniently inspected by the public, and, similarly, in such other places as the commission may require. * * * * * Every public service company shall also file with, and as a part of, such tariffs and schedules, and post as directed, all rules and regulations that in any manner affect the said prices, charges, rates, fares, tolls or other

compensation, * * * * * motive power, or other facilities. Upon application, the commission may limit and restrict the number and character of such tariffs and schedules, and the number of offices or stations at which the same are required to be posted, as aforesaid." Art. II, section 1, Act of July 26th, 1913, (P. L. 1374).

"It shall be unlawful for any public service company after the first day of January, one thousand nine hundred and fourteen to render or furnish, or to offer to render or furnish, within this Commonwealth, any service of the kind or character rendered or furnished by it, until it shall have filed and posted its tariffs and schedules in accordance with the provisions of sub-section (d) of section one of article two." Art. III, section 7, Act of July 26th, 1913, (P. L. 1374).

"(e). Where any public service company jointly acts or participates or connects with any other public service company in the performance of any service, to make and file with the commission, when so required by it, and post and publish as hereinbefore provided, the tariffs or schedules of the joint rates, prices, charges, fares, or tolls adopted or in force between them (including, when directed, the rules and regulations, contracts and practices affecting or relating to the same), which must be just and reasonable, and not more in the aggregate nor in the apportionment thereof between said companies, than may be prescribed by any order of the commission:—

Provided, however, That the tariffs or schedules of such joint rates, prices, charges, fare, or tolls need only be filed by one of the said public service companies; and the other company or companies, with the consent and approval of the commission, need only file such evidence of concurrence therein or acceptance thereof as may be required by the commission: Provided, That whenever any public service company shall file any tariffs or schedules under the provisions of this act, or shall participate in any such tariff or schedules so filed, the rates, fares, and charges, and the rules, regulations and practices, therein contained, as against such public service company, its officers, agents, and employees, shall be deemed to be the legal rate, fare, or charge, and the rules, regulations, and practices; otherwise, the published rate, rules, regulations, and practices if any, shall be the legal rate, fare or charge, rules, regulations and practices." Art. II, section 1, Act of July 26th, 1913, (P. L. 1374).

"(f). To make no change in any tariff or schedule, which shall have been filed or published or posted by any public service company in compliance with the preceding sections, except after thirty days' notice to the commission and to the public, posted and published in the manner, form, and places required with respect to the original tariffs or schedules, which shall plainly state the exact changes proposed to be made in the tariffs or schedules then in force, and whether an increase or decrease, and the time when the proposed changes will go into effect; and all such changes shall be shown by filing, posting, and publishing new tariffs or schedules, or shall be plainly indicated upon the tariffs or schedules in force at the time, and kept open to the public inspection: Provided, That the Commission may, in its discretion and for good cause shown, allow changes in such tariffs or schedules upon less than thirty days' notice herein specified, or upon other conditions: And provided, further, That no rate, practice, or classification which shall have been determined by the com-

mission shall be changed or discontinued by the public service company, directly or through any change in classifications, rules, regulations, contracts, or practices, within a period of three years after such determination, without application to and the approval of the commission, of which application thirty days' prior notice shall be given in the said tariffs or schedules to the public: And provided further, That it shall be the duty of every public service company, when required by the commission, to issue to its shippers, consumers or other patrons a certificate or other evidence of payments made by them to it in excess of the prior established rate, of an increase in which rate notice has been given to the commission and the public as aforesaid." Art. II, section 1, Act of July 26, 1913, (P. L. 1374).

The posting and publishing of a schedule changing the rates of a public service company are a condition precedent to the taking effect of the changed rate, and where the schedule of change is not properly posted in rooms to which the public had access, the Public Service Commission may restrain a railway from putting the rate into effect: City of Pittsburgh v. Pittsburgh Railways Co., 259 Pa. 558.

"(w). If a gas corporation, water corporation, or other public service company, furnishing its service or product upon meter or other similar measurement, or electric corporation, to provide, and keep in and upon its premises, suitable and proper apparatus, to be approved from time to time and stamped or marked by the commission, for testing and proving the accuracy of gas, water, electric, or other meters furnished by it for use; and by which apparatus every meter may be tested, upon the written request of the consumer to whom the same shall be furnished, and in his presence if he shall so desire. If the meter so tested shall be found to be accurate, within such commercially reasonable limits as the commission may, by general or special order, fix for such meters, or class of meters, a reasonable fee, to be fixed by the commission by standing order, sufficient to cover the cost of such test, shall be paid by the consumer requiring such test; but, if not so found, then the cost thereof shall be borne by the public service company furnishing said meter." Art. II, section 1, Act of July 26th, 1913, (P. L. 1374).

## 35. POWERS OF WATER COMPANIES.

### A. TO MAKE REASONABLE AND JUST RATES AND CLASSIFICATIONS.

"It shall be lawful for every public service company—

(a). To demand, collect, and receive fair, just and reasonable prices, rates, fares, tolls, charges, or other compensation for each and every service rendered or to be rendered by it to any person or corporation, or to any other public service company with whom it interchanges facilities and services.

To establish a sliding scale of rates, fares, or charges; provided that a schedule showing such scale of rates, fares, or charges shall first have been filed with the commission and approved by it." Art. III, section 1, Act of July 26th, 1913, (P. L. 1374).

"(b). To employ, in the conduct and management of its business, suitable and reasonable classifications of its service, patrons, and rates; and such classification may, in any proper case, take into account the nature of, the use, and quantity used, the time when used,

the purpose for which used, the kind, bulk, value, and facility of handling of commodities, and any other reasonable consideration." Art. III, section 1, Act of July 26th, 1913, (P. L. 1374).

B. TO MAKE REASONABLE RULES AND REGULATIONS.

"(c). To have reasonable rules and regulations, subject to existing law and the provisions of this act, governing the conduct of its business and the conditions under which it shall be required to render service.

It may require the payment of charges in advance, the making of reasonable minimum payments and deposits to secure future payments of such charges; or it may allow discounts for prompt payments of the same, or impose penalties for failure to pay promptly: Provided, That such advance charges, minimum payments, deposits, discounts, or penalties are reasonable and apply equally and without discrimination or preference to all shippers, consumers, and patrons, under like conditions and under similar circumstances." Art. III, section 1, Act of July 26th, 1913, (P. L. 1374).

A water company has the right to make reasonable rules and regulations in regard to the use of water and to enforce payment therefor: Brumm's Appeal, 22 W. N. C. 137; Miller v. Wilkes-Barre Gas Co., 206 Pa. 254. But the Public Service Commission has authority to determine whether such rules and regulations are reasonable: Beaver Valley Water Co. v. Public Service Commission, 70 Super. Ct. 621.

In the latter case the court held that a rule requiring arrearages of water rents for service to a former owner to be paid by a successor in title as a condition precedent to service was unreasonable since the end sought to be attained may be secured by other equally effective rules. Previous to this decision the courts have held that a water company may shut off the water supply for failure to pay lawful rents due; Smith v. Scranton Gas & Water Co., 5 Lack. L. N. 235; Sinking Spring Water Co., v. Wyomissing Borough 22 D. R. 716; even though arrears are due from former owner whose title was sold at sheriff's sale: Brumm's Appeal, 22 W. N. C. 137; Kohler v. Reitz 46 Pa. Super. Ct. 350; or, it would seem, any predecessor in title; Miller v. Wilkes-Barre Gas Co., 206 Pa. 254; and to do so has the right, subject to reasonable regulations, to make excavations in the streets. A permit must be granted by the municipality where it establishes this as a regulation: Riverton Consolidated Water Co., v. Camp Hill Borough, 24 D. R. 453. But a water compnay has no right either to shut the water off or to refuse to turn it on at one house because of arrears due for another house of the same owner: Springfield Consolidated Water Co., v. Griffith 27 D. R. 343.

But in order to place the liability for the unpaid bills of a former owner of the property upon a subsequent owner, and to enable the company to shut off the supply for failure of such subsequent owner to pay the same, it would seem that there must have been either actual notice that he would be required to pay such bill, or constructive notice by a resolution or by law of the company: Miller v. Wilkes-Barre Gas Co., 206 Pa. 254.

When the charter of a water company fixes the maximum price that may be charged for water the company may not shut off the water supply for failure of the consumer to pay more than such maximum amount: Trimmer v. White Haven Water Co., 4 Kulp. 293.

The allowing of a discount for payment in advance, or for payment on or before a certain day, and the imposing of a penalty for non-payment on a certain day, would seem to be reasonable rules: Mount Holly Water Co., v. Borough of Mount Holly Springs, 10 Super. Ct. 162. See also Bower v. United Gas Improvement Co., 37 Super. Ct. 113.

A water company may receive payments of rents in advance: Mount Holly Water Co. v. Borough of Mount Holly Springs, 10 Super. 162; Trimmer v. White Haven Water Co., 4 Kulp. 293.

A water company may allow a discount for payment in advance or for payment on or before a certain day, or may impose a penalty for non-payment upon a certain day: Mt. Holly Water Co., v. Borough of Mt. Holly Springs, 10 Sup. 162.

On this point see also Bower v. United Gas Improvement Co., 15 Dist. 152; Bower v. United Gas Improvement Co., 15 Dist. 409.

Rules of a water company allowing a discount for prompt payment, or imposing a penalty for non-payment, evidently intended to apply to private consumers, cannot be construed as applicable to a municipality having a contract with the company for water for hydrants and fire plugs, entered into prior to the adopting of the rules by the company: Mt. Holly Water Co., v. Borough of Mt. Holly Springs, 10 Sup. 162.

See sections 68, 73, 74 and 75.

## 36. MUNICIPALITY CANNOT REGULATE RATES.

A city or borough council has no authority to fix by ordinance the rates to be charged by a water company, nor can this be done as a condition upon which the company is allowed the use of the streets and highways: Schroeder v. Scranton Gas & Water Co., 20 Sup. Ct. 255. But it would seem that this may be done by agreement with the company: Wilkinsburg Borough v. Water Co., 56 Pitts. 135.

A bill in equity to restrain a water company from raising its rates for water on the ground that the new rates are unreasonable and in violation of a contract with the borough, where the evidence fails to sustain the allegations, will not be sustained: Atticks v. Water Co., 232 Pa. 551.

Although the act of June 27th, 1913, (P. L. 568), provides for the regulation and inspection of public service companies by cities of the third class, they have no power to determine the reasonableness of rates charged by such companies, nor to prescribe regulations relating to facilities, service and business of such corporations. These are functions of the Public Service Commission: Water Company v. York, 250 Pa. 115.

See sections 33, 34, 35, 37 and 38.

## 37. CHARTER LIMITATIONS.

Where a water company formed under special act prior to the passage of the act of April 29th, 1874, is limited by its charter in the amount it can charge for water, it cannot charge more than such amount, even though it subsequently accepts the Constitution and the act of April 29th, 1874: White Haven Borough v. White Haven Water Co., 209 Pa. 166; Trimmer v. White Haven Water Co., 4 Kulp 293.

See section 36.

38. WATER COMPANIES MAY NOT DISCRIMINATE.

"It shall be unlawful for any public service company—

(a). To charge, demand, collect, or receive, directly or indirectly, by any special rate, rebate, drawback, abatement, or other device whatsoever, from any person or corporation, for any service rendered or to be rendered, a greater or less compensation or sum than it shall demand, charge, collect, or receive from any other person or corporation for a like and contemporaneous service under substantially similar circumstances and conditions." Art. 111, section 8, Act of July 26th, 1913, (P. L. 1374).

A company has no right to establish a schedule of rates whereby one consumer will be compelled to pay at a higher rate than another for the same service. Such a system of charges amounts to an unjust discrimination and will be prevented by mandamus: Long v. Springfield Water Co., 8 Del. Co., 151.

A water company's charge for borough hydrants for fire protection must be in reasonable proportion to rates established for other demands; and where the total income of a water company was about $7,000.00 from a population of 6,000 a demand of $3,000 for fire hydrants was reduced to $1,100.00: Leechburg Borough v. Leechburg Water Works Co., 219 Pa. 263.

It is not an unreasonable discrimination for a water company to charge owners of a boarding house additional rates for each five boarders or roomers, or fraction thereof, after the first five in the house: Herlacher v. Borough, 8 Dauph. 148.

Certain free service to a municipality by a water company in return for the use of the streets of the municipality by the water company, as provided by ordinance, is unlawful discrimination: Borough of East Pittsburgh v. Penna. Water Co., 5 Dept. Rep. 1758.

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## ARTICLE VIII.

### EMINENT DOMAIN.

### A. COMPANIES FOR THE SUPPLY OF WATER TO THE PUBLIC, AND COMPANIES FOR THE SUPPLY, STORAGE AND TRANSPORTATION OF WATER AND WATER POWER FOR COMMERCIAL AND MANUFACTURING PURPOSES.

39. APPROPRIATION OF LAND AND MATERIAL AUTHORIZED.

"Where such companies shall be incorporated for the supply of water to the public, or for storing and transportation or supply of water and water power for commercial and manufacturing purposes,

they shall have power to provide, erect and maintain all works and machinery necessary or proper for raising and introducing into the town, borough, city, or district where they may be located, a sufficient supply of pure water, or water and water power as aforesaid, and for that purpose may provide, erect and maintain all proper buildings, cisterns, reservoirs, pipes and conduits, for the reception and conveyance of water or water power * * * * * and it is further authorized and empowered by itself, its agents, engineers, and workmen, and with its and their tools, carts, wagons, beasts of draught or burden, to enter upon such lands and enclosures, streets, lanes, alleys, roads and highways and bridges as may be necessary to occupy, or to obtain materials for the construction of said works, and to occupy, ditch and lay pipes through the same, and the same from time to time to repair, subject to such regulations in regard to streets, roads, lanes and other highways and impairing the free use thereof as little as possible, and subject to such regulations as the councils of said borough, town, city or district may adopt in regard to grades or for the protection and convenience of public travel over the same, and if any injury be done to private property the said company shall make compensation therefor in the manner provided for in the forty-first section of this act." See section 52, Act of April 29th, 1874; section 34, clause 2, as amended by Act of May 16th, 1889, (P. L. 226).

The act of May 16th, 1889, confers upon companies for the supply of water to the public, the right of eminent domain, and hence, the right to take, when agreement cannot be made with [illegible] and operation of their land necessary for the [illegible] Water Co., 161 Pa. 422.

Where, however, such a company admits that it intends to supply a railroad company only, it will be restrained by injunction from taking a private property under the right of eminent domain: Watson v. Water Co., 9 Lack. 171.

The said act of May 16th, 1889, also confers upon companies "for the supply, storage and transportation of water and water power for commercial and manufacturing purposes" the right of eminent domain over land and material in as much as the Legislature clearly intended by said act to confer upon such companies the same rights, privileges and powers as those possessed by companies chartered for the supply of water to the public. The fact that the principal consumer of such a company will be a railroad company, and that owing to the nature of the country very few citizens are engaged in commercial and manufacturing enterprises such as will require water or water power, is immaterial: Jacobs v. Clearview Water Co., 220 Pa. 388.

A company chartered under the act of April 29th, 1874, (P. L. 73), as amended by the act of May 16th, 1889, (P. L. 226), "for the storage, transportation and supplying of water and water power for commercial and manufacturing purposes" is invested with the right of eminent domain and can occupy public roads: Manufacturers' Water Company's Petition 19 D. R. 728; Raystown Water Power Co., v. Brumbaugh 246 Pa. 225.

A water company incorporated by a private act, which has accepted the provisions of the Constitution of 1874 and the act of April 29th,

1874, (P. L. 73), acquires under the act of May 16th, 1889, (P. L. 226), the right of eminent domain: Blauch v. Johnstown Water Co. 247 Pa. 71; Croyle v. Johnstown Water Co., 259 Pa. 484.

To enable a water company to turn off the water at a house or other place, a water company has the right, subject to reasonable regulations, to make excavations in the streets. A permit *must* be granted by the municipality where it prescribes this as a regulation: Riverton Consolidated Water Co., v. Camp Hill Borough 24 D. R. 453.

"Before any such water company shall proceed to occupy any land or enclosure, or to obtain and use any material therefrom for the purpose mentioned in this section, it shall be lawful for them to agree with the owner or owners thereof for the purchase of so much thereof as may be necessary, or as to the amount of injury sustained thereby; but in case they cannot agree, proceedings shall be had as provided in section forty-one of this act." See section 52: Act of April 29th, 1874, section 34, clause 4, amended by Act of June 12th, 1879, (P. L. 177).

## 46. EXTENT OF APPROPRIATION OF LAND AND MATERIAL.

The land appropriated by a water company for the proper construction and operation of its works may be within or without the district which it has been chartered to supply with water: Keller v. Riverton Water Co., 161 Pa. 422.

To condemn, act of May 16th, 1889, water companies have the power limited merely to private property held for public use and are not Water Co., 210 Pa. 177. To do this the grant Gas Co., v. Butler necessity so absolute that without the right will be defeated: Philadelphia Water Supply Co., v. Susquehanna Canal Co., 4 Dist. 637.

It would seem, however, that the right to condemn franchises and property held for a public use cannot extend to a practical destruction of another public corporation: Philadelphia Water Supply Co., v. Susquehanna Canal Co., 4 Dist. 637.

A water company does not exhaust its power of eminent domain over land by a single taking: Keller v. Water Co., 34 Super. Ct. 301.

Where a water company has once exercised the right of eminent domain in the location of its pipe line, it may not lay out an entirely new and additional line over the same land, no matter how convenient such new line may be. It may enlarge its existing line, but not re-locate one: McKay v. Pennsylvania Water Co., 6 Dist. 364.

Property and franchises of a water company may be condemned by a city and the appraisement must include the fair valuation of the water works, property, rights and franchises of the company. In such a proceeding the entire cost is payable by the city: Monongahela Water Co.'s case, 223 Pa. 323.

Land formerly appropriated by a water company for a reservoir may also be condemned for road purposes: Road in Herrick & Ararat Townships 16 Super. Ct. 579.

A water company which owns an extensive tract of land comprising a watershed, but which has not formally appropriated such land

to public use nor made actual use of it, and shows no present or future necessity for it, cannot restrain a railroad from appropriating so much of it as may be necessary to straighten its roadway: Scranton Water Co. v. Railroad, 9 Lack. 37.

A water company or water power company cannot condemn more land than is reasonably necessary to conduct the business of the corporation: Raystown Water Power Co., v. Brumbaugh 246 Pa. 225.

## 41. ADDITIONAL RIGHTS GIVEN TO COMPANIES FOR THE SUPPLY OF WATER TO THE PUBLIC.

"Whenever any water company incorporated for the purpose of supplying water to the public shall have found, or shall find it necessary in storing water to occupy and flow with water portion of any turnpike or any public road in the Commonwealth, the said company shall cause the same to be reconstructed forthwith, at their own proper expense, on a favorable location to be approved by the court of quarter session of the proper county, and in as perfect a manner as the original road, and are authorized to condemn land for that purpose whenever an agreement as to price cannot be had with the owners." Act of May 26th, 1893, section 1, (P. L. 158).

"Any such water company shall be and is hereby empowered to acquire and hold by purchase, or condemnation, such lands along and contiguous to streams of water, or reservoirs from which water is taken for public use, as may be necessary to preserve them from contamination: Provided, That no land shall be taken for the uses mentioned in this act until just compensation shall have been made for property taken, injured or destroyed, which shall be paid or secured before such injury or destruction: And provided further, That any owner of land along said streams shall have the use of the water for farming and domestic purposes with free ingress and egress at all times to such streams." Act of May 26th, 1893, section 2, (P. L. 159).

"The damage incurred in changing the location of any turnpike or public road as authorized by the first section of this act, and in acquiring lands to preserve water supply from contamination, as authorized by the second section of this act, shall be ascertained and paid by such water company in the same manner as is provided for in regard to the taking of lands, waters, materials, property and franchises, for the public purposes of such water company, and no lands, property or franchises, shall be taken for the uses mentioned in this act until just compensation shall have been paid or secured therefor." Act of May 26th, 1893, section 3, (P. L. 159).

Whenever a company chartered under act of April 29th, 1874, (P. L. 73), as amended by act of May 16th, 1889, (P. L. 226), occupies or floods any portion of a public road, it must reconstruct the same at its own expense: Manufacturer's Water Company's Petition, 19 D. R. 728.

The court will not grant the prayer of the petition to change a road on an ex parte hearing but will determine from the facts whether or not the proposed road is in a favorable location: Butler Water Company's Petition, 27 D. R. 357.

Whenever any water company incorporated for the purpose of supplying water to the public shall have heretofore acquired any

lands in this Commonwealth, by purchase or by lease, along or contiguous to streams of water or reservoirs from which water is taken for public use, that may be necessary to preserve the water supply of such water company from contamination, the said company shall hold the said lands to them, their successors and assigns in fee simple, or for the term for which the said lands may have been granted or leased to them, subject, however, to any reservation, limitation or condition under or upon which such lands may have been conveyed or leased. Section 1, Act of June 18th, 1895, (P. L. 195, No. 116).

42. APPROPRIATION OF WATER AUTHORIZED.

The act of May 16th, 1889, (P. L. 226), amending clause 2 of section 34 of the act of April 29th, 1874, in addition to extending the right to condemn land theretofore conferred upon companies for the supply of water to the public, to companies for the supply, storage, and transportation of water and water power for commercial and manufacturing purposes, also conferred upon both classes of water companies the right to appropriate waters, providing that such companies "shall have power to appropriate so much of the water from the rivers, creeks, canal water rights and easements, within or without the limits of the city, borough, or place in which said company may by its charter be located, as may be necessary for its purposes, and all damage done thereby shall be ascertained, recovered and paid as provided for in the forty-first section of the act to which this is a supplement." See section 49 * * * * * "Provided, That this act shall not apply to private springs or private water supplies."

A "private water supply is one which is such from its source to its end. It cannot be divided up into sections, calling one a private supply and another not a private supply:" Sinking Spring Water Co., v. Gring, 26 D. R. 867.

For further definition of "private water supplies" see Catharine Gring v. Sinking Spring Water Company, 7 Pa. Super. Ct. 63.

The taking of a stream of water by condemnation at a given level, although it includes all the water at that point, is but a partial taking of the stream; and a subsequent taking of it at a higher level, considering the pressure and the supply affected by it, is in every ordinary and proper sense an additional taking: Sinking Spring Water Co., v. Gring, 26 D. R. 867.

Such company will not be restrained by injunction from diverting the water of a river, from the channel through which it would naturally flow in front of the premises of the plaintiff before it has exercised its right of condemnation. Plaintiff must proceed by action of trespass to recover damages for the unlawful diversion of the water. The measure of damages would be the difference in the market value of the land affected before and after the injury: Rider v. York Haven Water and Power Company 26 D. R. 14.

43. EXTENT OF APPROPRIATION OF WATER.

The act of May 16th, 1889, authorizing the appropriation of water from rivers, creeks, canal water rights and easements, does not authorize the appropriation of the rivers, creeks, and canals themselves: Philadelphia Water Supply Co. v. Susquehanna Canal Co., 4. dist. 637.

A company accepting the provisions of the Constitution and the act of 1874 may appropriate so much of the waters of a river as may be necessary for its corporate purposes: Blauch v. Johnstown Water Company 247 Pa. 71. Not only for present purposes but for future needs also: Croyle v. Johnstown Water Co., 259 Pa. 484.

It has been held that a special act authorizing a water company to "appropriate such spring or springs, stream or streams of water as it may select," applied also to artificial water courses; City of Reading v. Althouse, 93 Pa. 400.

Inasmuch as a water company has no right to supply water to territory adjacent to its district, it has no authority under the right of eminent domain to condemn and appropriate water for that purpose: Bly v. White Deer Mountain Water Co., 197 Pa. 80.

Section 34 of the act of April 29th, 1874, authorizing water companies to appropriate the waters of a stream, contemplates a single taking and one assessment of damages. Where, therefore, it was shown that the company's intention was to appropriate the entire stream, evidence that the water of a stream was not entirely exhausted is immaterial: Miller v. Windsor Water Co., 148 Pa. 429.

See section 42.

## 44. RIGHT TO APPROPRIATE WATERS TAKEN AWAY.

"No water company, hereafter incorporated under any law shall have powers or exercise the right of eminent domain, as respects the appropriation of the streams, rivers or waters of this Commonwealth, or any of them, nor the land covered thereby." Act of April 13th, 1905 (P. L. 152).

This act affects all water companies incorporated subsequently to its passage, but companies incorporated before April 13th, 1905, still have the same power to appropriate water conferred by the Act of May 16th, 1889, unless the right is forfeited.

The provision of the act refers to all waters within the State, whether flowing over lands owned by the State or by private owners: Bushkill Water Co., 18 Dist. 360; 36 Pa. C. C. 193.

## 45. RIGHT TO APPROPRIATE WATER MUST BE FORFEITED UPON CONSOLIDATION.

Section 2 of the act of June 7th, 1907, (P. L. 455), provides that no "agreement of merger and consolidation shall be approved by the said Water Supply Commission of Pennsylvania, nor by the Governor until each of the corporations, parties thereto, shall have filed in the office of the Water Supply Commission of Pennsylvania a written acceptance, under the seal of said corporation and authorized by a majority of the stockholders thereof, both of this act and of the act approved April 13th, 1905, entitled 'An act providing that the right of eminent domain, as respects the appropriation of streams, rivers or waters or the land covered thereby, shall not be exercised by water companies incorporated under law,' agreeing to be subject to and bound by the provisions of both of said acts, with like effect as if said corporation had been formed subsequently to the passage of both of said acts; and shall, also, have filed a certified copy of said acceptance in the office of the Secretary of the Commonwealth."

### 46. RIGHT TO APPROPRIATE WATERS MUST BE FORFEITED UPON PURCHASE AND SALE OF PROPERTY AND FRANCHISES.

Section 3 of the act of June 7th, 1907, (P. L. 455), after providing that no sale of the franchises and property of one water company to another should be valid until a certificate filed by the company so purchasing, designating the future sources of supply, shall have been approved by a majority of the members of the Water Supply Commission, provides that "no such certificate shall be approved by the said Water Supply Commission of Pennsylvania until the corporation so purchasing shall have filed in the office of the Water Supply Commission of Pennsylvania a written acceptance, under the seal of said corporation and authorized by a majority of the stockholders thereof, both of this act and of the act approved April 13th, 1905, entitled 'An act providing that the right of eminent domain as respects the appropriation of streams, rivers, or waters or the land covered thereby, shall not be exercised by water companies, incorporated under law,' agreeing to be subject to and bound by the provisions of both of said acts, with like effect as if said corporation had been formed subsequently to the passage of both of said acts, and shall have filed a certified copy of said acceptance in the office of the Secretary of the Commonwealth."

### 47. RIGHT TO APPROPRIATE WATERS GIVEN TO COMPANIES FOR THE SUPPLY OF WATER TO THE PUBLIC IN CERTAIN CASES.

The act of May 28th, 1907, (P. L. 278), which requires any water company to furnish a sufficient supply to the inhabitants of any city, borough or township in which it obtains its supply, or to furnish the Water Supply Commission with its reasons for not doing so, further provides: "If in the judgment of the State Water Supply Commission, the reasons filed are of such a character as to indicate that no relief will be given the municipality complaining, in the way of a water supply, within a reasonable time, then said State Water Supply Commission may recommend to the Governor that letters patent be issued and a charter granted to any association of individuals who may legally form a water company, and who may apply for the same, and who will agree, in their application for a charter, to supply water to the municipality, city, borough, or township thus affected, and the inhabitants thereof, and for that purpose to have the right to condemn, take or appropriate a sufficient quantity of water, from any source of supply lying within the corporate limits of any municipality, city, borough, or township thus affected, as is adequate to supply the needs of such municipality, city, borough or township, and the inhabitants thereof."

## B. COMPANIES FORMED UNDER CLAUSE 18, SECTION 2, ACT OF APRIL 29TH, 1874.

### 48. APPROPRIATION OF LAND AND WATER AUTHORIZED.

Companies formed under the 18th paragraph of section 2 of the act of April 29th, 1874, as finally amended by the act of May 21st, 1889, (P. L. 259), the act of May 9th, 1901, (P. L. 624) and the

act of June 3rd, 1911, (P. L. 635) whose purpose as stated in the said paragraph, is "the storage, transportation and furnishing of water * * * * * for manufacturing and other purposes, and for the creation, establishing, furnishing and transmission for public use of water power therefrom," are given by that paragraph "the right to take rivulets and land;" and by clause 4 of section 34 of the act of April 29th, 1874, it is provided with regard to such companies that "the right to take lands, waters or rivulets shall be exercised in the manner provided in the forty-first section of this act." See section 49.

### 49. RIGHT TO APPROPRIATE WATERS TAKEN AWAY.

Whatever right to appropriate water may have been given to companies of this class exists only in companies incorporated prior to April 13th, 1905, companies incorporated since that time having no such right by virtue of the act of April 13th, 1905, (P. L. 152), taking away from water companies the right of eminent domain over waters. See section 41.

The act of April 13th, 1905, (P. L. 152), cannot be so construed as to prevent a water company from exercising its right of eminent domain as to the land lying outside the bed of the stream, which is necessary to enable the company to discharge its corporate functions: Brumbaugh v. Raystown Water Power Co., 254 Pa. 215.

### 50. RIGHT TO APPROPRIATE WATERS FORFEITED UPON CONSOLIDATION OR UPON PURCHASE AND SALE OF FRANCHISES AND PROPERTY.

Whatever rights to appropriate waters exists in such companies must be forfeited, as in the case of companies of the other two classes, upon merger and consolidation with another company, or upon the purchase or sale of the property and franchises of one company by or to another by virtue of sections 2 and 3 of the Act of June 7th, 1907, (P. L. 455). See sections 42 and 43.

### 51. RIGHT TO APPROPRIATE EITHER LAND OR WATER MAY NOT EXIST AT ALL.

In Peifly v. Mountain Water Supply Co., 214 Pa. 340, and in Jacobs v. Clearview Water Supply Co., 220 Pa. 388, it was held that a corporation formed for "the purpose of storing, transporting and furnishing of water, with the right to take rivulets and land, and erect reservoirs for holding water for manufacturing and other purposes, and for the creation, establishing, furnishing, transmission and using water power therefrom" under paragraph 18 of section 2 of the Act of April 29th, 1874, and its supplements, "is presumably a corporation for private uses which cannot constitutionally be invested with the right of eminent domain." It would seem, therefore, that before any company of this class can be said to have the right to appropriate either land or water, the burden is upon it to show, in each particular case, that it is a public corporation for public use.

## C. PROCEDURE UNDER RIGHT OF EMINENT DOMAIN.

### 52. METHOD OF TAKING LAND, MATERIAL AND WATER.

"That in all cases in which, under the provisions of this act, any corporation is permitted to take waters, streams, lands, property,

materials or franchises for the public purposes thereof, and the said corporation cannot agree with the owner or owners of any such waters, streams, lands, materials or franchises, for the compensation proper for the damage done or likely to be done to or sustained by any such owner or owners of such waters, streams, land or materials which such corporation may enter upon, use or take away, in pursuance of the authority herein given, or by reason of the absence or legal incapacity of any such owner or owners, no such compensation can be agreed upon, the court of common pleas of the proper county, on application thereto, by petition, either by said corporation or by the owner or owners or any one in behalf of either, shall appoint three discreet and disinterested freeholders of the proper county, and appoint a time not less than ten nor more than twenty days thereafter, for said viewers to meet at or upon the premises where the damages are alleged to be sustained, or the property taken, of which time and place five days' notice shall be given by the petitioner to the said viewers and the other party; and the said viewers having been first duly sworn or affirmed, faithfully, justly and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises, they shall estimate and determine the quantity, quality and value of said lands, streams or property so taken or occupied, or to be taken or occupied, or the materials so used or taken away, as the case may be, and having a due regard to and making a just allowance for the advantages which may have resulted, or which may seem likely to result to the owner or owners of said streams, land or materials, in consequence of the making the improvements or conducting the operations of such corporation or of the construction of works (for) which the property is to be taken; and after having made a fair and just comparison of said advantages and disadvantages, they shall estimate and determine whether any, and if any, what amount of damages has been or may be sustained, and to whom payable, and make report thereof to the said court; and if any damages be awarded, and the report be confirmed by the said court, judgment shall be entered thereon; and if the amount thereof be not paid within thirty days after the entry of such judgment, execuion may then issue thereon, as in other cases of debt, for the sum so awarded, and the costs and expenses incurred shall be defrayed by the said corporation; and each of the said viewers shall be entitled to one dollar and fifty cents per day for every day necessarily employed in the performance of the duties herein prescribed, to be paid by such corporation.

"In all cases where the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of such owner or owners no such agreement can be made, either for lands, streams, water, water-rights, franchises or materials, the corporation shall tender a bond with at least two sufficient sureties to the party claiming or entitled to any damages, or to the attorney or agent of any person absent, or to the guardian or committee of any one under legal incapacity, the condition (of) which shall be that the said corporation will pay, or cause to be paid, such amount of damages as the party shall be entitled to receive after the same shall have been agreed upon by (the) parties, or assessed in the manner provided for

by this act: Provided, That in case the party or parties claiming damages refuse or do not accept the bond as tendered, the said corporation shall then give the party a written notice of the time when the same will be presented for filing in court, and thereafter the said corporation may present said bond to the court of common pleas of the county where the lands, streams, water or materials are, and if approved the bond shall be filed in said court for the benefit of those interested, and recovery may be had thereon for the amount of damages assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question.

"The viewers provided for in this section may be appointed before or after the entry for constructing said work or taking materials therefor, and after the filing of the bond hereinbefore provided for, and upon the report of said viewers being filed in said court, either party, within thirty days thereafter, may file his, her or their appeal from said report to said court. After such appeal either party may put the cause at issue in the form directed by said court, and the same shall then be tried by said court and a jury, and after final judgment, either party may have a writ of error thereto from the supreme court, in the manner prescribed in other cases; the said court shall have power to order what notices shall be given connected with any part of the procedings, and may make all such orders connected with the same as may be deemed requisite. If any exceptions be filed with any appeal to the proceedings, they shall be speedily disposed of; and if allowed, a new view shall be ordered, and if disallowed, the appeal shall proceed as before provided:" Act of April 29th, 1874, section 41 as amended by the act approved May 5th, 1911, (P. L. 112).

Where a water company has instituted condemnation proceedings, and has given a bond which has been accepted, it will not be allowed to discontinue the proceedings, for the reason that there has been a permanent taking: Weatherly Water Co's Petition, 7 Dist. 561; 21 Pa. C. C. 330.

Where a water company has appropriated water for its corporate use, the right of the land owner to commence proceedings by petition for viewers under section 41 of the act of April 29th, 1874, does not depend either upon the filing of a bond by the company or the making of a specific appropriation of a definite quantity of water which the company intended to use: Bowers v. Citizens Water Co., 162 Pa. 9. On the question of filing a bond see also Blauch v. Johnstown Water Co., 247 Pa. 71.

Where there has been a taking under the right of eminent domain by a water company, or an injury which amounts to a taking for which compensation must be made, and the property and franchises of the company were sold at judicial sale before the compensation was made, the purchaser at judicial sale takes the property and franchises subject to the claim for compensation: Lycoming Gas & Water Co., v. Moyer, 11 W. N. C. 443.

Where the adaptability of land intended for use by a water company is obvious, preliminary entry and survey are not necessary: Keller v. Water Co., 34 Super. Ct. 301.

### 53. MEASURE OF DAMAGES FOR TAKING WATER.

The measure of damage for the appropriation of water is the difference in value of the whole property before and after the taking; the difference between what the property would have sold for when unaffected by taking and what it would sell for when so affected. To arrive at this the jury may consider the use to which the property is put: Miller v. Windsor Water Co., 148 Pa. 429.

The measure of damage to a mill owner on a stream below the point where water is taken is the depreciation in value of the mill property: How much less the property was worth to the owner or a bona fide intending purchaser after the appropriation than before: Lee et al., v. Springfield Water Co., 176 Pa. 223.

In ascertaining the amount of damages sustained by a riparian owner, the average condition of the stream for a number of years is the proper basis, and not its condition in one particular season: Philipsburg Water Co. v. Citizens Water Co., 43 W. N. C. 382.

Where a water company condemns water the damages are to be estimated as of the time of the taking and must include the amount of water, the right to divert which is taken, irrespective of the amount actually diverted: James v. West Chester Borough, 220 Pa. 490.

In a proceeding against a water company to assess damages, for injury to a mill property, witnesses for the plaintiff, who are millers or manufacturers, familiar with the property in question and in a general way with the market value of property in the neighborhood, may express their opinion as to the value of the condemned property, and also that there has been a decrease in the supply of water to the mill affecting the operation of the plant: Mengell's Ex'rs v. Mohnville Water Co., 224 Pa. 120.

## D. RIPARIAN OWNERSHIP.

### 54. WATER COMPANIES AS RIPARIAN OWNERS.

Where a water company has the right of eminent domain, but takes water from a stream for its corporate purposes not by virtue of that right, but by virtue of its right as riparian owner, it has no other or higher right than any other riparian owner, regardless of its business needs: Philadelphia & Reading Railway Co. v. Pottsville Co., 182 Pa. 418: Dubs v. Hanover & McSherrystown Water Co., 53 Pa. Super. Ct. 470.

Where a water company takes water from a stream as riparian owner without having condemned it, it has no standing to enjoin a new company from taking water from the same stream, at a point higher up, where it appears that the stream furnishes twenty times the water which the first company takes; its rights are only those of a riparian owner: Philipsburg Water Co. v. Citizens Water Co., 189 Pa. 23.

A water company which is the owner of land upon which there is a spring of water cannot divert the stream flowing from such spring without proceeding under the right of eminent domain, and making compensation to the lower riparian owners for the loss caused by such diversion: Lord v. Meadville Water Co., 135 Pa. 122.

Where a water company has title by purchase it has the same rights as other owners to restrain the pollution of a stream: Scranton Water Co. v. Hall, 9 Lack. L. N. 80.

The mere non-riparian use of water by a water company through pipes gives rise to no inference of riparian possession; and where a water company takes water through pipes from a reservoir which it has never acquired by condemnation or by purchase, it has no right as a lower riparian owner to restrain the pollution of a stream above. In such a case a water company cannot restrain the maintenance along the watershed of a hog farm or slaughter house from which the refuse percolates to a stream which feeds the reservoir: Scranton Water Co. v. Hall, 8 Lack. L. N. 348.

## ARTICLE IX.

### RIGHT TO DAM STREAMS.

55. AUTHORITY.

There does not appear to be any special authority vested in companies for the supply of water to the public, or for the supply, storage, and transportation of water and water power for commercial and manufacturing purposes, as such, to dam public or navigable rivers or streams. As regards private streams such companies of course, stand in the same position as other corporations or individuals where they are riparian owners, and as regards public or navigable streams the only authority which they appear to have is that which in general belongs to all other corporations or individuals. Section 1 of the Act of March 23rd, 1803, (4 sm. 20), provides that, "All and every person or persons owning lands adjoining any navigable stream of water declared by law, a public highway, except the rivers Delaware, Lehigh and Schuylkill, be and they or either of them are hereby authorized to erect a dam or dams for a mill or mills or other water works upon any such stream of water adjoining their own lands and to keep the same in good repair and also to lead off thereby on his or their own land so much of the water of such stream as may be necessary for his or their mill, or mills, or other water works; Provided, That the said person or persons, his or their heirs and assignees in erecting the said dam or dams, or keeping them in repair, shall not obstruct or impede the navigation of such stream or prevent fish from passing up the same; And, provided also, That the person or persons so erecting said dam or dams shall not infringe on or injure the rights and privileges of the owner or possessor of any private property on such stream."

This act licenses only such erections in a river as is subservient to the use of water power, and, hence, does not justify making a pool for rafts: Commonwealth v. Church, 1 Pa. 105.

It does not authorize the erection of a dam for the purpose of creating an artificial flood to carry logs down the stream: DuBois v. Glaub, 52 Pa. 238.

The right conferred by this act in respect of the great rivers of the State which are navigable, by nature, and, therefore, public highways at the common law, is merely a license which may be revoked whenever the paramount interests of the public shall require it: New York & Erie Railroad Co. v. Young, 33 Pa. 175.

The act of July 2nd, 1895, (P. L. 432), providing that corporations for the supply, storage or transportation of water and water power for commercial and manufacturing purposes be authorized and empowered to determine the character, design and construction of the works and the use to be made of the water and water power, provides that such companies may "by themselves, their agents, engineers, and workmen cause to be located, constructed, maintained, repaired and operated under the law and supplements to which this is a further supplement, (Act of April 29th, 1874), the said works and all machinery, dams, buildings, cisterns, races, canals, waterways, reservoirs, pipes, conduits, lines, plants, apparatus, fixtures and appliances, deemed necessary." It is doubtful, however, if this act was intended, or could be construed, to authorize corporations of this class to build dams in public or navigable rivers, the provision more likely referring to the building of such dams as a corporation may be from some other source authorized to build, that is, dams in private streams, of which they are the owners, or dams which they in common with other corporations and individuals, may be authorized to build by virtue of the act of May 28th, 1803.

Under the provisions of the act of June 25th, 1913, (P. L. 555), a permit from the Water Supply Commission is necessary before a dam or other obstruction in any stream can be either built or repaired. See sections 63 and 64.

## 56. COMPANIES FORMED UNDER CLAUSE 18, SECTION 2, OF THE ACT OF APRIL 29TH, 1874, AND ITS AMENDMENTS.

Clause 18, section 2 of the act of April 29th, 1874, as finally amended by the act of June 3rd, 1911, (P. L. 635), authorizes the formation of companies "for the storage, transportation and furnishing of water, with the right to take rivulets and land and erect reservoirs for holding water, for manufacturing and other purposes, and for the creation, establishing, furnishing and transmission for public use of water power therefrom: * * * * * the construction of dams in any stream, and the driving and floating of sawlogs, lumber and timber on and over any streams, not exceeding thirty-five miles in length * * * * * from their source, by the usual methods of driving and floating logs, timber and lumber on streams." Section 2 of the Act of June 22nd, 1883, (P. L. 156), as amended by the act of June 10th, 1893, (P. L. 412) provides, "That corporations organized for the purpose of erecting reservoirs for the storage of water, construction of dams, transmission of power and the driving and floating of logs, timber and lumber on streams not exceeding thirty-five miles in length, or on the heads of all streams not exceeding thirty-five miles in length from their source, shall have power to clear out,

improve and use any stream or the head of any stream not exceeding in length thirty-five miles from its source, to purchase dams and erect new dams thereon, may straighten, deepen, crib and widen such stream, or the head of any stream for the distance aforesaid as they deem proper, and may generally use and manage the streams and the head of streams for the distance aforesaid and their improvements thereon, for the floating of logs, lumber and timber thereon, by both natural and artificial floods in their discretion, but in such manner as not to obstruct the descending navigation by rafts and boats."

See section 12 (b).

## 57. DAMS MUST PERMIT THE PASSAGE OF FISH—PENALTIES.

Any person now or hereafter erecting or maintaining a dam in the waters of this Commonwealth shall immediately, on a written order from the Commissioner of Fisheries, erect therein such chutes, slopes, fishways, gates, or other devices, as the Board of Fishery Commissioners may deem necessary to enable the fish to ascend and descend the waters at all seasons of the year. Section 85, Act of July 28th, 1917, (P. L. 1215).

See sections 55, 63 and 64.

No person shall place any device or object in the waters within this Commonwealth in such a manner as to obstruct the migration or passage of fish therein, or to obstruct any fishway. Any person violating the provisions of this section is guilty of a misdemeanor and, on conviction as provided in article thirteen, shall be sentenced to pay a fine of one hundred dollars. Section 95, Act of July 28th, 1917, (P. L. 1215).

Any person neglecting or refusing to comply with sections 85 and 86 of this article within three months from the date of notice provided in section 85 of this act, shall forfeit and pay the sum of one hundred dollars for every month such person so refuses or neglects. Such sum shall be recovered by civil suit or process in the name of the Commonwealth. Section 88, Act of July 28th, 1917, (P. L. 1215).

## 58. DUTY TO REMOVE OBSTRUCTIONS IN STREAMS.

Any obstruction in the streams of this Commonwealth, not permitted by law, shall, when found, be immediately removed by any fish commissioner, fish-warden, sheriff, or other peace officer. Section 96, Act of July 28th, 1917, (P. L. 1215).

## 59. DRAINING OF AND REGULATIONS CONCERNING DAMS.

Every such chute, slope, fishway, gate or other device shall be maintained, open and in good order and repair, by the person owning or maintaining such dam, until said dam is removed, raised or rebuilt. Section 86, Act of July 28th, 1917, (P. L. 1215).

Any chute, fishway, or other device aforesaid may be closed for repairs at the time of low water, but such closing shall only be for a period of thirty days at any one time. Section 87, Act of July 28th, 1917, (P. L. 1215).

No person owning, leasing, or maintaining a dam, holding back waters inhabited by fish, shall draw off such waters without first applying for written permission from the Department of Fisheries; nor

shall any such person obstruct the flow of water through any such dam, without allowing sufficient water, at all times, to flow in the natural stream on which such dam is located, to enable the fish to live. Any person violating the provisions of this section is guilty of a misdemeanor, and, on conviction as provided in article thirteen of this act, shall be sentenced to pay a fine of one hundred dollars for each offense. Section 91, Act of July 28th, 1917, (P. L. 1215).

Any person owning or maintaining a raceway, flume, or inletpipe, leading to a water-wheel, turbine, pump, or canal, shall immediately, upon receipt of a written order from the Commissioner of Fisheries, place and maintain a bar-rack, of not less than one-half inch nor more than an inch and a half space between the bars, in or near such raceway, flume, or inlet-pipe, sufficient to prevent fish from entering therein. Any person refusing or neglecting to comply with such order for a period of one month shall forfeit and pay the sum of one hundred dollars, which shall be recovered by civil suit and process in the name of the Commonwealth. Section 93, Act of July 28th, 1917, (P. L. 1215).

## 60. COMMISSIONER OF FISHERIES AUTHORIZED TO ACT IN CERTAIN CASES.

If, after the lapse of three calendar months from the date of notice provided by section 85 of this act, the person owning or maintaining said dam neglects or refuses to erect or place or maintain, unchanged, open, and in good order and repair, the appliance as directed by the Commissioner of Fisheries, said commissioner is authorized to enter upon such dam and erect such slope, chute, fishway, or gate or make such repairs, as may have been directed as aforesaid. The cost thereof shall be charged against the person owning or maintaining such dam, by the Commissioner of Fisheries, and may be recovered by civil suit and process in the name of the Commonwealth. Section 89, Act of July 28th, 1917, (P. L. 1215).

If, one month after the notice provided in section 92 (3) of this act, the person owning or operating such raceway, flume, or inlet-pipe has not placed such bar-rack as may have been directed, the Commissioner of Fisheries is authorized to enter upon such raceway, flume, or inlet-pipe, and place a bar-rack, of not less than one-half inch nor more than an inch and a half space between the bars. The cost thereof shall be charged against such owner or operator, and if not promptly paid may be recovered by civil suit and process in the name of the Commonwealth. Section 94, Act of July 28th, 1917, (P. L. 1215).

## 61. COMMONWEALTH TO PAY COSTS IN CERTAIN CASES.

Where, by reason of any dam having been constructed prior to any requirements by law of the placing of chutes, slopes, or fishways therein, or for any other reasons the owner or person maintaining such dam cannot be compelled by law to pay the cost of erecting such chute, slope, or fishway, as directed by the Commissioner of Fisheries, such cost shall be paid by the Commonwealth of Pennsylvania out of such funds as may be appropriated therefor. Section 96, Act of July 28th, 1917, (P. L. 1215).

62. UNLAWFUL TO INJURE ANY DAM.

That any person or persons who shall maliciously, after the passage of this act, break down, destroy or remove, or in any manner whatsoever injure, impair or damage, in whole or in part, any rip-rap, wall, dam, bank or breakwater, built or formed or composed of stone, cinders or other materials, along property fronting or abutting on any river or stream within this Commonwealth, or who shall remove, carry away or tear up any stones, cinders, or other materials of which such rip-rap, wall, dam, bank or breakwater shall be in whole or in part, composed, shall be deemed guilty of a misdemeanor, and shall on conviction thereof in the court of quarter sessions of the county in which the offense shall have been committed be fined for each offense not exceeding two hundred dollars, or imprisonment in the county jail or work-house not exceeding six months: Provided, That prosecutions under this act shall be begun within two years from the time of the commission of the offense: And provided further, That the provisions of this act shall not apply to counties having a population of over five hundred thousand inhabitants. Section 1, Act of May 19th, 1879, (P. L. 65, No. 71).

63. CONSTRUCTION OF DAMS AND OTHER WATER OBSTRUCTIONS MUST BE APPROVED BY WATER SUPPLY COMMISSION.

"From and after the passage of this act, it shall be unlawful for any person or persons, partnership, association, corporation, county, city, borough, town or township to construct any dam or other water obstruction; or to make or construct, or permit to be made or constructed, any change therein or addition thereto; or to make or permit to be made, any change in or addition to any existing water obstruction; or in any manner to change or diminish the course, current or cross section of any stream or body of water, wholly or partly within, or forming a part of the boundary of this Commonwealth, except the tidal waters of the Delaware River and its navigable tributaries, without the consent or permit of the Water Supply Commission of Pennsylvania, in writing, previously obtained, upon written application to said commission therefor." Section 2, Act of June 25th, 1913, (P. L. 555).

Sections 1 and 2 of the act of June 25th, 1913, (P. L. 555), supplies the Act of May 28th, 1907, (P. L. 299).

See sections 55 to 62.

"The term 'water obstruction,' as used in this act, includes any dam, wall, wing-wall, wharf, embankment, abutment, projection, or similar or analogous structure, or any other obstruction whatsoever, in, along, across, or projecting into any stream or body of water wholly or partly within, or forming part of the boundary of, this Commonwealth, except the tidal waters of the Delaware River and of its navigable tributaries.

"The word 'construct' shall be taken to mean construct, erect, build, place or deposit." Section 1, act of June 25th, 1913, (P. L. 555).

"Each application for the consent or permit required by the second section of this act shall be accompanied by complete maps, plans, profiles, and specifications of such water obstruction, or of the said

changes or additions proposed to be made, and such other data and information as the commission may require." Section 3, Act of June 25th. (P. L. 555).

"The provisions of this act shall not prohibit the placing in any purely private stream, having a drainage area of less than one-half square mile, of any dam or obstruction that cannot in any way imperil life or property located below or above such dam or obstruction; nor shall the provisions of this act prohibit the making of necessary temporary repairs to any water obstruction." Section 9, Act of June 25th, 1913, (P. L. 555).

The Public Service Commission has no authority to regulate the erection of dams or the development of the water power resources of the State; that is a matter within the jurisdiction of the Water Supply Commission: Pa. Power Co., v. Public Service Commission, 261 Pa. 211.

In 1911 Attorney General Bell advised the Water Supply Commission that, the compact between the States of New Jersey and Pennsylvania for concurrent jurisdiction over the Delaware River being continued in force, the Pennsylvania Water Supply Commission has no jurisdiction to approve plans for a dam over that river; 21 D. R. 319.

The act of May 28th, 1907, (P. L. 299), has given to the Water Supply Commission jurisdiction over all public rivers; over all private rivers, which are in fact navigable, although not declared public highways by acts of Assembly; and over all private streams which have been declared public highways.

If the construction of a dam or other obstruction in a purely private non-navigable stream would have the effect of changing or diminishing the course, current or cross-section of any public or navigable river or stream heretofore declared a public highway, the commission, under the act of 1907, would have jurisdiction to regulate the construction of such dam or other obstruction: Cassleman River, 40 Pa. C. C. 457.

Where a riparian owner on the western shore of a river obstructs the channel * * * * * of the stream so as to divert the water naturally flowing along the eastern shore to the injury of the riparian owner thereof, a decree of a court of equity directing the removal of the obstructions will be sustained.

In such a case the decree cannot be given the effect of depriving the defendant of any rights, powers or privileges to which it may be entitled under Mill Dam act of March 3rd, 1803, (4 Sm. Laws 20) or under the Water Supply Commission acts of May 4th, 1905, (P. L. 385), and May 28th, 1907, (P. L. 299), or which it may enjoy as a public service corporation vested with the right of eminent domain: Rider v. York Haven Water and Power Co., 242 Pa. 141.

64. POWERS AND DUTIES OF WATER SUPPLY COMMISSION CONCERNING DAMS AND OTHER WATER OBSTRUCTIONS.

"The commission shall have power to grant or withhold such consent or permit, or may incorporate in and make a part of said consent or permit such conditions, regulations, and restrictions as may be deemed by it advisable. It shall be unlawful to construct or be-

gin the construction of any such water obstruction, or to make or begin any change or addition aforesaid, except in accordance with the terms, conditions, regulations, and restrictions of such consent or permit, and such rules and regulations, with regard to said constructions, changes, or additions, as may be prescribed by the commission." Section 4, Act of June 25th, 1913, (P. L. 555).

"Upon complaint, or upon its own initiative, the commission shall have power to cause an investigation or examination to be made of any dam, or other water obstruction now existing or hereafter constructed. If the commission shall determine that such dam or water obstruction is unsafe or needs repair, or should be removed as being unsafe and not susceptible of repair, the commission shall, in writing, notify the owner or owners thereof to repair or remove the same, as the exigencies of the case may require; such work to be commenced and proceeded with to completion within such reasonable time as may be prescribed in such notice by the commission. And it shall thereupon be and become the duty of such owner or owners to comply with the provisions of such notice. If said owner or owners, notified as aforesaid, shall neglect or refuse to make such repairs or to cause such removal, or if said owner or owners cannot be found or determined, then it shall be and become the duty of the commission to make such repairs or cause such removal; and the commission may thereafter recover, in the name of the Commonwealth, from the owner or owners, the said cost or expense, in the same manner as debts are now by law recoverable." Section 5, act of June 25th, 1913, (P. L. 555).

"If the condition of any dam or other water obstruction be so dangerous to the public safety as not to permit of the giving of the notice, hereinabove provided, to the owner or owners of such obstruction to remove such dangerous condition, the commission shall have power to remedy such condition by repair, removal, or otherwise, and may recover the cost and expense thereof from the owner or owners as debts are now by law recoverable." Section 6, act of June 25th, 1913, (P. L. 555).

"Nothing in this act contained shall be construed to vest in the said Water Supply Commission any powers or authority heretofore vested by law in the directors of the Department of Wharves, Docks, and Ferries, of cities of the first class, or in the Board of Commissioners of Navigation for the River Delaware and its Navigable Tributaries; but the said directors and the said board shall have the power and authority over the river Delaware and its navigable tributaries heretofore conferred." Part of section 10, act of June 25th, 1913, (P. L. 555).

65. WHEN INJUNCTIONS ARE APPLICABLE.

"Upon application of the commission, verified by oath or affirmation, the court of common pleas of any county, sitting in equity, may, by injunction, enforce the compliance with, or restrain the violation of, any order or notice of the commission made pursuant to the provisions of this act, or restrain the violation or attempted violation of any of the provisions of this act." Section 8, act of June 25th, 1913, (P. L. 555).

Where loss is caused to a lower riparian owner because of the dis-

repair of a dam the upper riparian owner will be restrained by injunction from allowing the water to be wasted by lack of proper repair: Allentown Portland Cement Co., v. Huy et al., 27 D. R. 396.

66. PENALTIES.

"Any person or persons, partnership, association or corporation, county, city, borough, town or township, that shall do or cause to be done; or that shall fail, neglect or refuse to do, or cause to be done, any act or thing contrary to the provisions of this act; or that shall violate, or fail to comply with, any order of the commission, of which due notice shall be given: or that shall violate any of the provisions of this act, shall be guilty of a misdemeanor; and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars, or, in the discretion of the court such person or persons, or the members of such partnership, or association, or the officers and directors of such corporation, or the officers of such county, city, borough, town or township, as the case may be, sentenced to undergo an imprisonment in the county jail for a period not exceeding one year, either or both, in the discretion of the court." Section 7, act of June 25th, 1913, (P. L. 555).

67. USE OF DAM.

Where a water company is authorized to build a dam, and has done so, it is not ultra vires to lease it to an ice company for a long term of years: McKay v. Pennsylvania Water Co., 6 Dist. 364.

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## ARTICLE X.

### MUNICIPAL RELATIONS.

### A. ENTRY UPON STREETS AND HIGHWAYS.

68. CITIES AND BOROUGHS.

A company for the supply of water to the public, or for the supply, storage and transportation of water and water power for commercial and manufacturing purposes is "authorized and empowered by itself, its agents, engineers and workmen, and with its and their tools, carts, wagons, beasts of draught or burden, to enter upon such lands and enclosures, streets, lanes, alleys, roads and highways and bridges, as may be necessary to occupy or to obtain materials for the construction of said works, and to occupy, ditch and lay pipes through the same, and the same from time to time to repair, subject to such regulations in regard to streets, roads, lanes and other highways and impairing the free use thereof as little as possible, and subject to such regulations as the councils of said borough, town, city or district may adopt in regard to grades or for the protection and convenience of public travel over the same:" Act April 29th, 1874, section 34, clause 2, as amended by act May 16th, 1889, (P. L. 226).

"Reasonable municipal regulations" is not limited to the control of the mere surface; it extends to the soil beneath to whatever extent may be necessary for the health and safety of the public. Mountain Water Co. v. Emaus Borough, 43 Pa. Super. Ct. 179.

An ordinance is unreasonable and void which provides "that no rights and privileges be granted to said water company to lay pipes and fixtures on any streets, lanes or alleys in said territory until the same are regularly adopted, located and opened by ordinances and graded to the required grade under the rules and regulations of the borough." Such an ordinance would be not a regulation, but a prohibition for an indefinite period in certain cases, and a court of equity can grant relief by injunction. Mountain Water Co. v. Emaus Borough, 43 Pa. Super Ct. 179.

A water company chartered under the general laws of the Commonwealth is not compelled to obtain the consent of the municipal council before it may lay its pipes in the streets, or open the streets in order to obtain access to its pipes for a necessary purpose, and a municipality exceeds its powers, when, as to such a company, it undertakes to make the exercise of the chartered rights of the company dependent upon the consent of the municipal council. Shryock v. North Braddock Borough, 43 Pa. Super Ct. 508; New Cumberland v. Riverton Water Co., 232 Pa. 531, or refuses a permit to open the street to repair the pipes, Riverton Consolidated Water Co. v. Camp Hill Borough 24 D. R. 453.

A water company created under the act of April 29, 1874, (P. L. 73), and its supplements, exercises its franchise and maintains its property in the streets of any borough subject to the paramount right of such municipality to change the grade of the street in which its lines are located. Under such circumstances the water company is forced to lower its own pipes. Springfield Water Co. v. Philadelphia & Garrettford Railway Company, 45 Pa. Super. Ct. 516. Likewise the State Highway Department, under the act of May 31, 1911, P. L. 468, may compel such company to relocate or remove its pipes or other structures at its own expense. State Highway Department, 22 D. R. 117.

See sections 73 and 74.

69. TOWNSHIPS OF FIRST CLASS.

"No water company, gas company or electric light company shall enter upon or occupy, in any manner whatever, any street or highway within any township of the first class of this Commonwealth, without first making application, in writing, to the proper authorities of such township of the first class, and obtaining its consent or permission, which shall be given by ordinance only, and upon such conditions, stipulations, and regulations as the municipal authorities may deem proper:" Act June 6th, 1907, (P. L. 417).

70. TOWNSHIPS OF SECOND CLASS.

A water company may enter upon and occupy the streets, lanes or highways of a township of the second class subject to reasonable regulations by the township supervisors in regard to grades, or for the protection and convenience of public travel over the same: Bryn Mawr Water Co. v. Lower Merion Township, 4 Dist. 157. A town-

ship of the second class has no authority through its supervisors to impose restrictions and conditions on opening of highways for laying pipes: Easton Township v. Gas and Electric Co., 35 Pa. C. C. 497; 18 Dist. 400.

Where a water company lays its pipes under a township road without making any compensation to the owner of the land, and thereafter, the owner, a coal company, removes the coal in its mining operations, and the surface of the road subsides and injures the pipes, the water company cannot recover damages from the coal company for the injuries sustained. Spring Brook Water Supply Co. v. Penna. Coal Co. 54 Pa. Super Ct. 380.

## 71. HYDRO-ELECTRIC COMPANIES: CITIES, BOROUGHS AND TOWNSHIPS.

The act authorizing water power companies to develop electric power for commercial and manufacturing purposes, provides that such companies "shall have authority to make, erect and maintain the necessary buildings, machinery and apparatus for developing power and current, and to distribute the same to any place or places with the right to enter upon any public road, street, lane, alley or highway for such purposes; and to alter, inspect and repair its system of distribution: Provided, That no such company shall enter upon any street or alley in any city, borough or township of this Commonwealth, until after the consent to such entry of the councils of the city or borough or supervisors of the township in which such street or alley may be located shall have been obtained:" Act July 2nd, 1895, (P. L. 425).

## 72. USE OF SIDEWALKS.

Where a water company has the right to occupy a street with its pipes, it may lay them under the sidewalk without subjecting itself to any other liability to the owner of the abutting property than for such damages as may be done in laying the pipes, interrupting access, etc.: Provost v. New Chester Water Co., 162 Pa. 175.

## 73. EXTENT OF CONTROL BY MUNICIPALITIES.

The Act of July 26, 1913, P. L. 1374, in Article III, provides as follows:

"Section 2. Upon the approval of the commission evidenced by its Certificate of Public Convenience, first had and obtained, and not otherwise, it shall be lawful for any proposed public service company—

(b). To begin the exercise of any right, power, franchise, or privilege under any ordinance, municipal contract, or otherwise."

"Section 11. No contract or agreement between any public service company and any municipal corporation shall be valid unless approved by the commission: Provided, That, upon notice to the local authorities concerned, any public service company may apply to the commission, before the consent of the local authorities has been obtained, for a declaration by the commission of the terms and conditions upon which it will grant its approval of such contract or agreement, if at all."

See Wilkes-Barre Co. vs. Public Service Commission 70 Super Ct. 464.

By the act of June 6th, 1907, (P. L. 417), no entry can be made on any street or highway of a township of the first class by any water company without the consent of the supervisors of such township having first been given by ordinance.

So, also, by the act of July 2nd, 1895, (P. L. 425), no water company generating and distributing electric power shall make any entry upon any street or alley in any city, borough or township without the consent of the councils of the city or borough, or the supervisors of the township. The necessity for such companies, however, obtaining consent exists only where it is intended to distribute electric power or current, and such company with regard to its right to distribute water stands in the same position as any other water company: Forty Fort Borough v. Forty Fort Water Co., 9 Kulp, 241.

In all other cases of the entry upon the streets, alleys or highways of cities, boroughs or townships of the second class there is no provision of law requiring the company to obtain consent, or prohibiting their making such entry until such consent is obtained, the act of May 16th, 1889, (P. L. 226), merely providing that such companies shall have the right to enter upon such streets and highways "subject to such regulations as the councils of such borough, town, city or district may adopt in regard to grades or for the protection and convenience of public travel over the same." It was formerly held by a court of Common Pleas in Lehigh-Coplay Water Co. v. Coplay Borough, 11 Dist. 602, that consent of the municipality was necessary. On the other hand, it was held by another court of common pleas in Forty Fort Borough v. Forty Fort Water Co., 9 Kulp, 241, that such consent is not necessary. It has now, however, been decided by the Supreme Court that such municipalities cannot require water companies to obtain permission to lay pipes in the streets: Dorrance v. Bristol Borough, 224 Pa. 464. But the councils of such city or borough, and the supervisors of such township, have control over water companies in so far as it is necessary to protect the rights of the traveling public and to enforce reasonable police regulation: Dorrance v. Bristol Borough, 224 Pa. 464; Landsdowne Borough v. Springfield Water Co., 16 Super. Ct. 490; Beaver Valley Water Co. v. Conway Borough, 213 Pa. 225.

While, however, it is not necessary for a company to procure the consent of a municipality to its entry on the streets thereof, it is competent for the municipality to require a water company to procure a permit for the purpose of opening the streets to make connections or repairs, and to pay a tax therefor: Landsdowne Borough v. Springfield Water Co., 16 Super. Ct. 490; Beaver Valley Water Co. v. Conway Borough, 213 Pa. 225, Springfield Water Co. v. Borough of Darby, 199 Pa. 400. Such permit cannot be refused by a municipality. Riverton Consolidated Water Co. v. Camp Hill Borough, 24 D. R. 453.

Such municipality also has power to levy an annual mileage license tax or fee on pipes of a water company: Kittanning Borough v. Armstrong Water Co. 35 Super. Ct. 174; Kittanning Borough v. Garretts Run Gas Co., 35 Super. Ct. 167; Kittanning Borough v. Consolidated Natural Gas Co. 219 Pa. 250.

In its regulation of a water company such municipality may compel the company to raise or lower its pipes in order to conform to a

new grade of a street: Scranton Gas & Water Co. v. Scranton, 214 Pa. 586; In re Kerlin Street, 12 Dist. 467. This same conclusion has also been reached with regard to townships: Bryn Mawr Water Co. v. Lower Merion Township, 4 Dist. 157. The same power exists in the State Highway Department under the act of May 31, 1911, (P. L. 468). State Highway Department, 22 D. R. 117.

See sections 35b, 68, 74 and 75.

## 74. REASONABLENESS OF LICENSE FEES.

A borough ordinance maintaining a fee of $2.00 for opening an unpaved street, $6.00 for opening a street paved with Belgian block or macadamized, and $8.00 for opening a street paved with asphalt or granolithic pavement is not unreasonable, and the fees so charged are not so grossly disproportioned to the expense of issuing a permit and the probable expense of proper inspection, regulation and police surveillance as to warrant the court in declaring them unreasonable: Landsdowne Borough v. Springfield Water Co., 16 Super. Ct. 490.

A fee of $3.00 for opening a street is reasonable: Springfield Water Co. v. Borough of Darby, 199 Pa. 400.

Where a water company in repairing its line digs up and re-paves streets and alleys, and police have been engaged to watch for leaks, unfilled ditches and obstructions and to place danger signals where necessary, the charge by a borough of a fee of $30.00 per mile for six miles is not unreasonable, and payment of the tax cannot be avoided because it subsequently appears that it was somewhat in excess of the actual expense of supervision: Kittanning Borough v. Armstrong Water Co., 35 Super. Ct. 174.

It would also seem that an annual license fee of $30.00 per mile for inspection, regulation and police surveillance of the proper line of a water company was not unreasonable: Kittanning Borough v. Consolidated Natural Gas Co., 219 Pa., 250.

## 75. METHOD OF DETERMINING REASONABLENESS OF LICENSE FEES IN DISPUTES BETWEEN MUNICIPALITIES AND WATER OR WATER POWER COMPANIES.

"Whenever, hereafter, any dispute shall arise between any township, city, borough, or other municipal corporation of this State, having authority under the law to charge a license fee against * * * * * any light, power * * * * * or water company, occupying the highways of such municipality with its poles, wires, conduits, or cables, as to whether or not the amount of license fee, named in any ordinance of said municipal corporation, for the inspection and regulation of the said poles, wires, conduits, or cables, under its police power, is or is not reasonable, either party may apply, by petition, to the court of common pleas of the county where said municipal corporation is situated, to determine the said dispute. Upon the filing of said petition, setting forth the nature and character of the dispute, and the facts bearing upon the question thus raised, the said court shall issue a citation to the respondent, commanding it to appear and answer the said petition at a time named, and to abide by and obey the order of the court. Said citation and a copy of said petition shall be served upon the respondent, not less than fifteen days before the time fixed for answering. To said petition the respondent shall

make answer within the time fixed, or such extension thereof as the court shall allow, specifically answering the facts set forth in said petition, and averring such other or further facts as it shall deem necessary for the proper determination of the said dispute. At any time after the return day fixed in the said citation, the said court shall, upon application of either party, fix a date for the hearing of the issue raised by said petition and answer, and thereupon shall take the evidence and decide the said dispute in the way and manner provided by law for the hearing of cases in equity." Section 1, Act of April 17, 1905, (P. L. 183), as amended by section 1, Act of July 26, 1913, (P. L. 1371).

This act is constitutional as to section one: Petition of Pennsylvania Gas Co. 258 Pa. 234, as to constitutionality of act of 1905, generally see West Chester Borough v. Postal Telegraph Cable Co., 227 Pa., 384.

"Said court shall have power to allow any pleading to be amended, to make all necessary, general or special rules or orders for the production of evidence and to expedite the said hearing, and may hear and determine the matter ex parte if the respondent fails to answer or appear at the time fixed for the hearing." Section 2, Act of April 17, 1905, (P. L. 183, No. 132).

"The said court, in its decision of said dispute, shall determine the amount of annual license fees which should be paid to the said municipal corporation in order to properly compensate it for the necessary cost of the services performed, or to be performed, by it, for the inspection and regulation of the poles, wires, conduits, cables, pipe or mains of the said telegraph, telephone, light, power, street passenger railway, motor traction, gas, or water company; and the amount thus determined shall be the maximum sum which the said municipal corporation shall be authorized to charge as license fees against such petitioning corporation." Section 3, Act of April 17, 1905, (P. L. 183), as amended by section 2, Act of June 23, 1917, (P. L. 643).

A license fee cannot be a tax for revenue for general purposes. Petition of Pennsylvania Gas Co. 258 Pa. 234.

"Either party shall have the right of appeal from the order of the court, to the Supreme or Superior Court, as in other cases." Section 4, Act of April 17, 1905, (P. L. 183).

"The amount of such annual license fees, as determined by the final order of the court, shall continue until altered by the court itself; but no application shall be made for that purpose oftener than once in every two years." Section 5, Act of April 17, 1905, (P. L. 183).

"Nothing in this act contained shall be so construed as to alter or affect the duty of said telegraph, telephone, light, power, street passenger railway, motor traction, gas, or water company to properly erect, or construct and maintain, its poles, wires, conduits, cables, pipes or mains, or to relieve it from liability for negligence in regard thereto, either primarily to the person injured or secondarily to the municipal corporation, if judgment is recovered against it by the person injured by reason of such negligence." Section 6, Act of April 17, 1905, (P. L. 183), as amended by section 3, Act of June 23, 1917, (P. L. 643).

## B. CONTRACT WITH MUNICIPALITIES.

### 76. PUBLIC SERVICE COMMISSION MUST APPROVE.

"Upon the approval of the commission evidence by its certificate of public convenience, first had and obtained, and not otherwise, it shall be lawful for any proposed public service company"—

"(b) To begin the exercise of any right, power, franchise, or privilege under any ordinance, municipal contract, or otherwise." Article III, section 2, Act of July 26, 1913, (P. L. 1374).

"No contract or agreement between any public service company and any municipal corporation shall be valid unless approved by the commission: Provided, That, upon notice to the local authorities concerned, any public service company may apply to the commission, before the consent of the local authorities has been obtained, for a declaration by the commission of the terms and conditions upon which it will grant its approval of such contract or agreement, if at all." Article III, section 11, Act of July 26, 1913, (P. L. 1374).

The Public Service Commission Act of July 26, 1913, (P. L. 1374), is a proper exercise of the police power of the State, and is constitutional.

The fact that a light, heat and power company has secured the consent of borough authorities to the use of the borough streets, does not relieve it from the necessity of securing a certificate of public convenience from the Public Service Commission: Relief Electric L. H. & P. Company's Petition, 63 Pa., Sup. Ct. 1; Jenkins Township v. Public Service Commission, 65 Pa., Sup. Ct. 122.

### 77. CITIES.

The act governing cities of the second class confers upon such cities the exclusive right to supply the city with water, or, "to make contracts with, and authorize any person, company or association so to do, and to give such person, company or association the privilege of furnishing water, as aforesaid, for any length of time, not exceeding ten years:" Act of March 7th, 1901, article XIX, section 3, clause XL, (P. L. 20, 45).

Similarly the act governing cities of the third class confers upon such cities the exclusive right to supply the city with water, or "to make contracts with, and authorize any person, company or association so to do, and to give such person, company or association the privilege of furnishing water, as aforesaid, for any length of time, not exceeding ten years:" Act of May 23rd, 1889, article V, section 3, Clause XLIII, (P. L. 277, 293), now re-enacted in the Act of June 27th, 1913, (P. L. 568), article V, section 3, clause 43.

The supplying of water by a municipality is not a municipal duty, and if it assumes the performance of that function it acts under authority merely as a business corporation and not under municipal obligation: Kohler v. Reitz, 46 Pa. Super. Ct. 350.

### 78. BOROUGHS.

"Boroughs may receive bids from incorporated water companies, authorized to do business within such borough, for the supply of water for fire protection and for other municipal purposes, and may contract therefor with such company." Section 21, article XVII, chapter VI, Act of May 14, 1915, (P. L. 312).

"Boroughs, may provide, a supply of water for the use of the public within such borough, by erecting and operating water-works, by purchasing and operating water-works, by entering into contract with persons or corporations authorized to supply water within the limits of such boroughs, or partly by the erection or purchase and operation of water-works and partly by entering into a contract." Section 1, article XVII, chapter VI, of the Act of May 14, 1915, (P. L. 312), as amended by section 16, of the act of July 6, 1917 (P. L. 704).

"No contract for the supply of water hereafter entered into by any borough with any person or corporation shall, in any wise, abridge the power of the borough to construct and operate water-works as provided in section one of this article, but such power shall remain in force as though such contract had not been made." Section 2, article XVII, chapter VI, Act of May 14, 1915, (P. L. 312).

## 79. TOWNSHIPS OF FIRST CLASS: FOR FIRE PROTECTION.

In the enumeration of powers conferred upon townships of the first class is the following:

"To enter into contracts with any person or corporation to supply water for fire protection for a period not exceeding twenty years. No such contract shall be exclusive as against the right of any other water company nor interfere with the right of such township to erect, maintain and operate its own water works." Act of July 14, 1917, (P. L. 840), chapter VII, article I, section 381, clause 17.

A water company cannot be compelled by a township of the first class to furnish free fire plugs: Springfield Township v. North Springfield Water Co. 29 Pa. C. C. 616; 20 Mont. 109.

## 86. TOWNSHIPS OF SECOND CLASS: FOR FIRE PROTECTION.

In townships of the second class the township supervisors have power:

"On the petition of the owners of a majority of the lineal feet frontage along any highway or portion thereof in any village within the township, to enter into contract with water companies for the placing of fire-hydrants along said highway, for the protection of property from fire." Act of July 14, 1917, (P. L. 840), chapter VII, article II, section 386, clause 3.

## 81. EFFECT OF CONTRACT TO SUPPLY WATER TO A MUNICIPALITY.

Cities of the second and third classes are given by the Act of March 7th, 1901, (P. L. 45), and May 23rd, 1889, (P. L. 277), as re-enacted in the Act of June 27th, 1913, (P. L. 568), respectively, the exclusive right to supply the inhabitants with water, and this right may be exercised either by the erection of their own water works, or by contract with a water company. Where, however, such a city exercises its right by entering into a contract with a water company, it cannot thereafter exercise that right in a different manner by the erection of its own works: White v. City of Meadville, 177 Pa. 643.

This same conclusion was also reached with regard to boroughs: Metzgar v. Borough of Beaver Falls, 178 Pa. 1; Wilson, et al., v.

Borough of Rochester, 180 Pa. 509; Nelson v. Warren Borough, 200 Pa. 504; and this is so even when the company failed properly to perform its contract: Troy Water Co. v. Troy Borough, 200 Pa. 453. Nor is the borough allowed to accomplish the same result indirectly by making a contract with a new water company, whose plant it intends to purchase: Welsh v. Borough of Beaver Falls, 186 Pa. 578. Neither can a borough, authorized by its charter to own stock and participate in the management of a water company, by selling its stock and divesting itself of any of the management of the company, acquire the right to make a new contract with another water company: Carlisle Gas & Water Co., et al., v. Carlisle Water Co., et al., 188 Pa. 51.

To prevent the municipality from erecting its own works, however, there must have been a contract. The mere grant of a right to use the streets of a borough is not the making of such a contract: Hastings Water Co. v. Hastings Borough, 216 Pa. 178. The mere supply of water to the residents of a municipality by a water company, not having an exclusive franchise, does not prevent such municipality from building its own works: Center Hall Water Co. v. Center Hall Borough, 186 Pa. 74. Nor does a charter requirement to furnish the municipality with free water for fire protection prevent the erection by the municipality of its own works: Boyertown Water Co. v. Boyertown Borough, 200 Pa. 394.

These conclusions represent the law as affecting water companies operating in boroughs prior to the passage of the Act of May 3rd, 1901 (P. L. 140), section 2 of which provides: "No contract for the supply of water, entered into by any borough, with any person, persons or corporations, shall in any wise affect or abridge the power of said borough to construct and operate water works as hereinbefore provided, but such power shall remain in full force and effect as though such contract had not been made."

Contracts entered into with a borough since May 3rd, 1901, cannot, therefore, deprive the borough of the right at any time to erect its own works, but where the contract was made prior to that date the act does not give the borough the right to erect water works: Potter County Water Co. v. Austin Borough, 206 Pa. 297.

The Act of May 3rd, 1901, (P. L. 140), section 2, was repealed by the Act of May 14, 1915, (P. L. 312), which re-enacted said section 2 so as to provide "no contract for the supply of water *hereafter* entered into by any borough—"

Where, however, a water company lays its pipes in the streets of a borough without permission of the borough, and without any contract with the borough at the time, but afterwards agrees to furnish water for fire purposes alone for a term of years, but without new construction, and without any liability on the part of the company for failure or neglect to provide supply, and thereafter, the borough by change of its charter acquires the right, which it did not theretofore possess, to construct water works of its own, the borough cannot be enjoined from the construction of such works: Dorrance v. Bristol, 224 Pa. 464.

With regard to townships of the first class, the Act of July 14, 1917, (P. L. 840), chapter VII, article I, section 381, clause 17, authorizing the township commissioners of such townships to contract with water companies for water for fire protection, adds the pro-

viso, that "No such contract shall be exclusive as against the right of any other water company, nor interfere with the right of such township to erect, maintain, and operate its own water-works."

## C. PURCHASE OF WORKS BY MUNICIPALITY.

### 82. PURCHASE AUTHORIZED AFTER TWENTY YEARS.

"It shall be lawful at any time after twenty years from the introduction of water * * * * * into any place as aforesaid, for the town, borough, city or district into which the said company shall be located, to become the owners of said works, and the property of said company, by paying therefor the net cost of erecting and maintaining the same, with interest thereon at the rate of ten per centum per annum, deducting from said interest all dividends theretofore declared:" Act April 29th, 1874, section 34, clause 7.

See sections 84 and 85.

Section 34, clause 7, of the Act of April 29, 1874, (P. L. 73), is not repealed by the Act of May 31, 1907, (P. L. 355).

The act of 1874 provides a compulsory method of acquiring adversely the property of a water company. The act of 1907 simply provides a method of ascertaining the price to be paid in cases where the parties reach an agreement of sale and purchase.

Article 3 of the Act of July 26, 1913, (P. L. 1374), does not apply to proceedings begun before the first day of January, 1914: Reynoldsville v. Water Co. 247 Pa. 26.

The right to purchase the property of a water company at the expiration of twenty years carries with it no right of interference by a municipality in the management of the company: Monessen Boro. v. Water Co. 243 Pa. 53.

The proper method for compelling a water company to furnish a municipality with information as to net cost and interest of works under this section is by mandamus and not by bill in equity: Williamsport v. Water and Gas Co. 232 Pa. 232.

Proceedings to compel a water company to sell its plant to a borough should be by mandamus and not by bill in equity: New Cumberland v. Water Co. 232 Pa. 525.

Where a municipality desires to purchase the property of a water company the latter is not obliged to furnish a statement of the net cost of maintenance and construction of its plant, but may be compelled by mandamus to permit an investigation of its books and plant for the purpose of ascertaining such cost.

Under the Act of July 26, 1913, (P. L. 1374), the approval of the Public Service Commission is necessary before a municipality can acquire the property of a public service company: New Brighton Boro. v. Water Co. 247 Pa. 232.

### 83. PUBLIC SERVICE COMPANY MUST APPROVE.

"Upon like approval of the (Public Service) Commission first had and obtained, as aforesaid, and upon compliance with existing laws, and not otherwise, it shall be lawful"—

"(d). For any municipal corporation to acquire, construct, or begin to operate, any plant, equipment or other facilities for the render-

ing or furnishing to the public of any service of the kind or character already being rendered or furnished by any public service company within the municipality.

Provided, however, That nothing herein contained shall interfere with or affect the right or power of a municipal corporation to continue the operation of its municipal plant, or to extend the same, within the territory of such municipal corporation, or any part thereof, which is not then being supplied by a public service company rendering or furnishing service of a like kind or character:" Article III, section 3, Act of July 26, 1913, (P. L. 1374).

A city of the third class cannot, without the approval of the Public Service Commission, extend its water system to recently annexed territory, in which a water company has been furnishing water to the public prior to the annexation and contiues such service: The Heights Water Co. v. City of Lebanon, 28 D. R. 118.

Where a contract between a water company and a borough, provides that at the expiration of ten years the borough shall have the right to purchase the water works at a price that shall be mutually agreed upon between the parties, the public service commission has no jurisdiction over the proposed acquisition until the borough has signified its intention to purchase: Huntingdon Boro. v. Huntingdon Water Supply Co. 258 Pa. 309.

See section 82.

## 84. IN CITIES OF THE THIRD CLASS.

"The councils of any city of the third class are hereby authorized and empowered to purchase, for such price as may be agreed upon by the councils of a city and a majority of the stockholders of the company, all the real, personal and mixed estate of any water * * * * * company or companies in such city, or adjacent thereto, and thereupon the said city shall possess and exercise all the rights, power, privileges and franchises by law belonging or pertaining to such company or companies:" Act May 23rd, 1889, article XII, section 1, (P. L. 308).

This act would appear to repeal the provisions of clause 7 of section 34 of the act of 1874, in so far as companies formed subsequently to May 23rd, 1889, to supply water in a city of the third class are concerned: White v. City of Meadville, 177 Pa. 643, 654.

## 85. PURCHASE OF PLANTS OF COMPANIES HAVING EXCLUSIVE FRANCHISES.

### A. CITIES.

"The several cities and boroughs of this Commonwealth, desirous of owning and operating the water works, plants, or system for the supply of water to any such municipality and the inhabitants thereof, which water works, plants, or system is now, or may hereafter be, owner by a private corporation, firm or individual, may petition the court of common pleas of the proper county, setting forth that the said municipality is desirous of owning said water plant or system, owned by such corporation, firm or individual, and that it will be necessary, in order to make payments therefor, to issue bonds, secured by such plant or system of water works, and that therefore a value should be placed upon such water works, plant, or system, in-

cluding all property, real or personal, used in connection therewith and reasonably necessary for its purposes:" Act of May 31, 1907, section 1, (P. L. 355). Repealed so far as relates to boroughs by Act of May 14, 1915, (P. L. 312). See (b) in this section.

The petition need not aver the financial ability of the city without incurring an indebtedness exceeding the limit set by the constitution, article IX, section 8. Fleetwood Water Co. v. Fleetwood Borough, 19 D. R. 418.

The act of 1907 simply provides a method of ascertaining the price to be paid in cases where the parties reach an agreement of sale and purchase. Reynoldsville v. Water Co. 247 Pa. 26.

So far as it affects water companies not appearing to have exclusive privileges, the act is not in conflict with the constitution of Pennsylvania or of the United States: Fleetwood Water Co. v. Borough, 1 Berks 69; s. c. 19 D. R. 418.

Where a water company is incorporated under the Act of April 29, 1874, (P. L. 73), which provides a method of determining the price at which municipalities can take over the properties of water companies, it cannot be deprived of its contract rights thereunder by subsequent legislation, and the Act of May 31, 1907, (P. L. 355), is not applicable as to such companies, as it would be contrary to the constitutional provision prohibiting the relation of a contract. Manheim Boro. v. Manheim Water Co. 229 Pa. 177.

Where a borough institutes proceedings under the Act of May 31, 1907, (P. L. 355), to acquire the plant of a water company, and the latter files a disclaimer consenting that the borough may install a plant with like force and effect as if the proceeding had been prosecuted to completion, the water company cannot thereafter maintain a bill in equity to prevent the construction of the borough water works. Clear Springs Water Co. v. Catasauqua Borough, 231 Pa. 290. affirming 3 Lehigh 319.

"The said court shall thereupon appoint three disinterested civil engineers as appraisers, to value and appraise such plant or system and the property used in connection therewith, and reasonably necessary for its purposes, who shall file their report in the office of the prothonotary of the proper court within three months after their appointment, unless such time be extended by the court:" Act May 31, 1907, section 2, (P. L. 355).

Where a water company files a paper disclaiming exclusive privileges and stating that it will not sell its plant to the borough, the court will not appoint appraisers: Catasauqua Borough's Petition, 3 Lehigh 48.

In such case if the borough proceeds to install a plant, and issue bonds therefor, the company cannot enjoin it, even though the course of dealings between the company and the borough might have precluded the borough from erecting its own plant if the disclaimer had not been made. Water Co. v. Catasauqua, 3 Lehigh 319.

"The appraisers so appointed shall have full access to the books and records of the private corporation, firm, or individual owning said water works or system, to inform themselves as to the income and value thereof. They shall have power to administer oaths, and are hereby authorized to hear and consider the testimony of witnesses and other legal proofs. Their report shall be final, if not appealed from within ten days after notice of the filing thereof shall have been

served on the mayor or burgess of the city or borough, and upon the corporation, firm, or individual owning the water works. Within said ten days either party may appeal from such appraisement, alleging an under or over valuation of the property thereby, and praying for a hearing before the court; and the said court shall thereupon, upon application of either party, fix a time when said appeal may be heard, of which time at least ten days' notice shall be given to the parties; upon such hearing the court shall have power, after hearing legal proofs and arguments, to increase or lower such appraisement, or otherwise, and modify the same as the facts may warrant, subject, however, to the right of appeal by either party to the proper appellate court, as in other cases in equity:" Act May 31, 1907, section 3, (P. L. 355).

"After such value is finally determined, the municipality is authorized to buy said water plant at the valuation so fixed and determined; and the said corporation, firm, or individual, owning same, shall, within ten days' notice of such determination, and a request by the municipality so to do, file in said court a paper indicating its consent and election to sell and convey its plant, system, and property so appraised, to the municipality, at the valuation fixed as aforesaid: and, in default whereof, such corporation, firm, or individual shall cease to have any exclusive privilege of supplying said municipality, or the citizens thereof, with water, and said municipality may install or cause to be installed such plant or system as the authorities may deem necessary and expedient for the accommodation of the public:" Act May 31, 1907, section 4, (P. L. 355).

It may be that the provision of the act of 1907 taking away the exclusive privileges of water companies which by charter or contract have such, upon their refusal to sell to the municipality at the determined value, runs counter to article I, section 10, of the federal constitution as involving an impairment of the obligation of contracts. But this provision cannot affect the validity of the statute so far as it may relate to companies not having exclusive privileges: Fleetwood Water Co. v. Fleetwood Borough, 19 D. R. 418.

"Should there be at the time of the passage of this act, a contract or agreement, in writing, existing between any corporation, firm, or individual owning the water plant or system, and a municipality then being supplied with water by such corporation, firm, or individual, establishing or adjusting or fixing the manner in which such water plant or system may be appraised, purchased, or acquired, then, and in that case, appraisers shall be selected, and the appraisement made in accordance with the terms of such contract, and to the respective parties to such contract shall, in lieu of the preceding provisions of this act, carry out the terms of said contract in arriving at the value of said water-plant or system." Section 7, Act of May 31, 1907, (P. L. 355).

B. BOROUGHS.

"Whenever any person, firm, or any corporation, shall own any water-works or system, and a borough is desirous of owning and operating such water-works or system, such borough may present its petition to the court of common pleas of the county, setting forth that the borough is desirous of owning such water-works or

system, and that it will be necessary to issue bonds to be secured by such water-works or system, and that a value should be placed upon such water-works or system, including all property, real and personal, used in connection therewith." Section 7 of article XVII, chapter VI, of the Act of May 14, 1915, (P. L. 312), as amended by section 17 of the Act of July 6, 1917, (P. L. 704).

See (a) in this section.

The fact that the water company owns property outside of the borough is not material, if the borough chooses to purchase the property located in the borough: Greensburg Boro. v. Westmoreland Water Co. 240 Pa. 481.

"The court shall thereupon appoint three civil engineers as appraisers, to value and appraise such water-works or system, and the property used in connection therewith, and the contracts or agreements with municipalities or townships, who shall file their report in the court within three months after their appointment, unless such time be extended by the court:" Section 8 of article XVII, chapter VI, of the Act of May 14, 1915, (P. L. 312).

"The appraisers shall have access to the books and records of the person, firm, or corporation owning such water-works or system, to inform themselves as to the income and value thereof. They shall have power to administer oaths and are authorized to take the testimony of witnesses. Their report shall be final if not appealed from." Sectino 9 of article XVII, chapter VI, of the Act of May 14, 1915, (P. L. 312).

"Within ten days after notice of the filing of any report, either party may appeal from such appraisement, alleging an undervaluation or overvaluation of the property, and praying for a hearing before the court. The court shall thereupon fix a time when such appeal may be heard, of which time at least ten days' notice shall be given to the parties, and upon such hearing the court shall have power to modify such report, and either party may appeal from the final confirmation of such report to the Superior or Supreme Court." Section 10 of article XVII, chapter VI, of the Act of May 14, 1915, (P. L. 312).

"After the value is finally determined, the borough is authorized to buy such water-works or system at the valuation so fixed; and the person, firm, or corporation owning the same, shall, within ten days after notice, file in court its consent to sell and convey its water-works or system and property to the borough at the valuation fixed; and, in default thereof, such person, firm, or corporation shall cease to have any exclusive privilege of supplying the borough or the citizens thereof with water, and the borough may install such water-works or system as may be necessary for the accommodation of the public." Section 11 of article XVII, chapter VI, of the Act of May 14, 1915, (P. L. 312).

"Should there be, at the time of the passage of this act, a contract or agreement, in writing, existing between any person, firm, or corporation, owning such water-works, or system, and a borough, dated prior to May thirty-first one thousand nine hundred and seven, establishing or fixing the manner in which such water-works or system may be appraised ad acquired, then the appraisement shall be made in accordance with the terms of such contract, and the respec-

tive parties to such contract shall, in lieu of the provisions of sections seven, eight, nine, ten, and eleven of this article, carry out the terms of such contract in arriving at the value of such water-works or system." Section 16, of article XVII, chapter VI, of the Act of May 14, 1915, (P. L. 312).

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## ARTICLE XI.

### AMENDMENT OF CHARTER

### A. GENERAL AMENDMENTS

86. AMENDMENT AUTHORIZED.

"When any corporation, formed for any of the purposes named in the second class of section two of the act to which this is a supplement, or embraced in that class by any of its supplements, and which shall have been or may hereafter be incorporated under the provisions of that act or its supplements, as also any corporation of the second class which has heretofore or may hereafter accept the provisions of said act and the several supplements thereto, and the Constitution of this Commonwealth in the manner provided by law, shall desire to improve, amend or alter the article and conditions of the charter or instrument upon which said corporation is formed and established, it shall and may be lawful for such corporation to apply to the Governor of this Commonwealth for such improvement, amendment or alteration in the manner provided by this act:" Act June 13th, 1883, section 1 (P. L. 122).

87. PUBLIC SERVICE COMMISSION MUST APPROVE.

"Upon like approval of the (public service) commission first had and obtained, as aforesaid, and upon compliance with existing laws, and not otherwise, it shall be lawful—

(a) For any public service company to renew its charter, or obtain any additional rights, powers, franchises, or privileges, by any amendment or supplement to its charter, or otherwise:" Article III, section 3, Act of July 26, 1913, (P. L. 1374).

88. NOTICE TO BE PUBLISHED.

"The corporation desiring such improvement, amendment or alteration shall give notice of the intention to apply therefor, in two newspapers of general circulation, printed in the county wherein the principal office or place of business of said corporation is located, once a week for three weeks, setting forth briefly the character and objects of the desired improvements, amendments or alterations, and the intention to make application therefor:" Act June 13th, 1883, section 2, (P. L. 122).

As to when publication in German newspapers is required, see section 8.

As to publication in legal journals, see section 8.

89. PROCEEDINGS TO AMEND.

"The said corporation shall prepare a certificate under its corporate seal, setting forth the character and objects of the proposed improvement, amendment or alteration of their charter or the instrument upon which the said corporation is formed or established; also, that all reports required by the Auditor General of the Commonwealth have been filed, and all taxes due the Commonwealth of Pennsylvania have been paid; acknowledged by the president and secretary of said corporation, and before the recorder of deeds of the county wherein such corporation has its principal office or place of business, which certificate, together with proof of publication of notice, as provided in section two of the supplement to an act of which this is an amendment, shall then be produced to the Governor of the Commonwealth, who shall examine the same, and if he find it to be in proper form, and that such improvements, amendments or alterations are or will be lawful and beneficial, and not injurious to the community, and are in accord with the purpose of the charter, and that all reports required by the Auditor General of the Commonwealth have been duly filed, and that all taxes due the Commonwealth of Pennsylvania have been paid, he shall approve thereof and endorse his approval thereon, and direct letters patent to issue in the usual form, reciting the said improvements, amendments or alterations, and the said certificate shall then be recorded in the office of the Secretary of the Commonwealth, and with all its endorsements shall then be recorded in the office for the recording of deeds in and for the proper county where the principal office or place of business of said corporation is located, and from thenceforth the same shall be deemed and taken to be a part of the charter or instrument upon which said corporation was formed or established to all intents and purposes, as if the same had originally been made a part thereof:" Act June 13th, 1883, section 3, (P. L. 122), as amended by Act March 31st, 1905, (P. L 94).

90. LIMITATIONS OF AMENDMENTS.

"Nothing in this act contained shall be construed to repeal or authorize the repeal of any of the requirements or restrictions of the said Act of April twenty-ninth, one thousand eight hundred and seventy-four and its supplements, nor to dispense with any of the provisions of the said act, nor to authorize the right of eminent domain to be given to any corporation by amendment of its charter, nor to permit any change in the objects and purposes of such corporation as shown by its original charter:" Act June 13th, 1883, section 4, (P. L. 123).

91. EXTENSION OF TERRITORY.

Section 3 of the Act of June 13th, 1883, as amended by the Act of March 31st, 1905, contains this proviso: "That nothing herein contained shall authorize the amendment, alteration, improvement

or extension of the charter of any * * * * * water company so as to interfere with or cover territory previously occupied by any other * * * * * water company:"

The territorial limits of a water company may, however, be extended under this act if such extension does not interfere or cover the territory previously occupied by another company: In re Sayre Water Co., Op. Atty. Gen., 1895-96, p. 398; and if the extension is not made beyond the limits of a single municipality: In re Monongahela Water Co., 9 Pa. C. C. 57.

92. CHANGE OF NAME.

Prior to the Act of June 13th, 1883, the name of a corporation was changed by the courts of common pleas. Subsequently to the passage of that act, however, it was held that the name of a corporation may be changed under the Act of June 13th, 1883, the right of the courts of common pleas to change the name being taken away thereby: Fort Pitt Building and Loan Assn. v. Model Plan Building and Loan Assn., 159 Pa. 308; In re Wetheral Steel Casting Co., 5 Pa. C. C. 337; In re Excelsior Oil Co., 3 Pa. C. C. 184. The method of changing the name of a corporation is now, however, provided for by a separate act:

"It shall be lawful for any corporation of this Commonwealth, heretofore or hereafter created by any general or special law, to change its corporate title by resolution of its Board of Directors, adopted by a two-thirds vote thereof, approved at any annual meeting, or special meeting duly called, of the stockholders by a two-thirds vote thereof. Upon such approval by the stockholders, it shall be the duty of the President of said corporation to file in the office of the Secretary of the Commonwealth a certificate, under the seal of the company, setting forth the resolution adopted by the Board of Directors and approved by the stockholders, the date of the adoption of such resolution by the Board of Directors and the date of its approval by the stockholders, the date of the original incorporation of the company, the act of assembly under which the said corporation was created, the name under which the said corporation was originally incorporated and all subsequent changes therein, and the name which the corporation desires to adopt. The Secretary of the Commonwealth shall examine the records in his office, and, if he finds that the name desired by said corporation does not conflict with the name of any corporation appearing upon said records, he shall require the said certificate to be recorded, and shall issue to the said corporation a certificate, under his hand and the seal of his office, granting to said corporation the use of said new corporate title. The Secretary of the Commonwealth shall, upon the issuing of any such certificate, require the same to be recorded in a book kept for that purpose, and certify to said change in the corporate title to the Auditor General of this Commonwealth: Provided, That any corporation, required to record the original certificate of incorporation in the office for the recording of deeds, shall, before being entitled to use the new corporate title, record in the office for the recording of deeds, where the original certificate of incorporation was recorded, the said certificate granted by the Secre-

tary of the Commonwealth authorizing the use of the new corporate title: Provided, also, That this act shall not apply to corporations not for profit:" Act of April 22nd, 1903, (P. L. 251).

## B. SPECIAL AMENDMENTS.

### 93. EXTENSION OF TERRITORY OF COMPANIES FOR SUPPLY OF WATER TO THE PUBLIC.

"Any company heretofore incorporated or hereafter to be incorporated for the purpose of supplying water to the public in any town, borough or city, upon the written request of the owners of a majority of the lots of land in any tract or district adjacent to such town, borough or city, have power and authority to exend its plant or works for the supply of water into such tract or district, with such rights and subject to such duties within such tract or districts as may have been conferred and imposed by its charter, within the town, borough or city therein designated: Provided, That such written request shall contain a description of such tract or district, and be recorded in the office of the recorder of deeds in and for the proper county, and thereupon a certified copy of the record of such proceedings as appears of record in the office of the recorder of deeds shall forthwith be transmitted to and filed in the office of the Secretary of the Commonwealth." Act May 21st, 1901, (P. L. 270).

### 94. CHANGE OF SOURCE OF SUPPLY.

"That any corporation for the supply of water to the public, or for the supply, storage and transportation of water and water power for commercial and manufacturing purposes; or any other water or water power companies formed or created subseqnently to the passage of this act, or subject to its provisions, requiring a new or additional source of supply for its water or water power, may make application therefor by filing in the office of the Secretary of the Commonwealth a certified copy of a resolution of its stockholders, under the seal of said corporation—a duplicate of which shall also be filed in the office of the Water Supply Commission of Pennsylvania—setting forth the necessity for such new or additional source of supply, and the river, stream or other body of water, and, as near as may be, the points on said river, stream or other body of water, between which it is desired to take or use water or water power; and if the application shall be approved by a majority of the members of The Water Supply Commission of Pennsylvania, it shall then be produced to the Governor, for his approval or disapproval; and if he shall approve the same, the Secretary of the Commonwealth shall issue a certificate that such new or additional source of supply has been duly authorized and the said certificate shall then be recorded in the office of the Secretary of the Commonwealth, and in the office for the recording of deeds in and for the county in which said river, stream or other body of water, or the portion thereof so authorized to be used, is situated, and shall thenceforth be deemed and taken to be part of the charter or instrument on which said corporation was formed or created, to all intents or purposes as if the same had originally been a part thereof: Provided, That the rights or privileges granted under or by the provisions of this act shall in no wise

prevent or prejudice the occupation of such source of supply of water by the State, for the purpose of promoting any system of inland navigation: And provided, further, That nothing in this act shall be construed to relieve any water company from complying with the requirements of the Act of April twenty-second, one thousand nine hundred and five, entitled 'An act to protect the purity of the waters of the State, for the protection of the public health:'" Act June 7th, 1907, section 4, (P. L. 455).

See section 28.

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# ARTICLE XII.

## AMOUNT OF CAPITAL STOCK AND INDEBTEDNESS.

### A. CAPITAL STOCK.

#### 95. AMOUNT AUTHORIZED.

"The capital stock of every such corporation that has or requires capital stock, shall consist of not more than one million dollars, except companies incorporated for the purpose of supplying the public with water, whose capital stock shall not exceed two million dollars, and shall be divided into shares of not more than one hundred dollars each; and all subscriptions to the capital stock shall be paid in such installments and at such time as the directors may require, and if default be made in any payment the person or persons in default shall be liable to pay, in addition to the amount so called for and unpaid, at the rate of one-half of one per centum per month for the delay of such payment, and the directors may cause suit to be brought for the recovery of the amount due, together with a penalty of one-half of one per centum per month, as aforesaid, or the directors may cause the stock to be sold in the manner provided in clause two of section thirty-nine of this act; and no stockholder shall be entitled to vote at any election, or at any meeting of the stockholders, on whose share or shares any installments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting. The shares of the capital stock of every such company may be transferred on the books of the company, in person or by attorney, subject to such regulations as the by-laws may prescribe; but the provisions of this section shall not apply to corporations in which by this act different and other rules and provisions are enacted for their regulation and government:" Act April 29th, 1874, section 11, as amended by Act of May 9th, 1889, (P. L. 180).

See sections 97 and 139 for amount of capital stock authorized on reorganization after sale or merger.

#### 96. CAPITAL STOCK WITHOUT NOMINAL OR PAR VALUE.

"Upon the formation or reorganization, under the laws of this Commonwealth now or hereinafter in force, of any stock corporation, other than building and loan associations and corporations authorized

by law to transact a banking or an insurance business, or upon the merger or consolidation thereunder of two or more such corporations, other than as aforesaid, provision may be made for the issuance of shares of preferred stock of any or all classes, or common stock of any class, or both preferred and common stock, without any nominal or par value, by stating in the certificate of incorporation or re-organization or in the joint agreement of merger or consolidation, in lieu of the statements now prescribed by law as to the amount of the corporation's capital stock and the number and par value of shares into which it is divided.

(a) The number of shares with nominal or par value, and the number of shares without nominal or par value, that may be issued by the corporation, and the classes, if any, into which such shares are divided.

(b) The nominal or par value of shares of stock other than shares which it is stated are to have no nominal or par value.

(c) The amount of capital with which the corporation will begin business:" Section 1, Act of July 12, 1919, (P. L. 914).

"No corporation authorized to issue shares of stock without nominal or par value in pursuance of the provisions of this act shall begin to carry on business, or shall incur any indebtedness, until the amount of its capital, stated in pursuance of section one of this act, shall have been fully paid in cash or in property taken at its actual value:" Section 2, Act of July 12, 1919, (P L. 914).

"Preferences, rights, limitations, privileges, and restrictions authorized by the Constitution and laws of this Commonwealth may be stated in dollars or cents per share in respect to shares of stock issued in pursuance of the provisions of this act:" Section 4, Act of July 12, 1919, (P. L. 914).

"Such corporation may issue and may dispose of its authorized shares having no nominal or par value, from time to time, for such consideration as may be prescribed in the certificate of incorporation or reorganization or the joint agreement of merger or consolidation, or, if not so prescribed, then for such consideration as may be fixed by the stockholders of such corporation at any annual meeting thereof or at any special meeting thereof duly called and held for the purpose, or by the board of directors acting under authority of such stockholders given in like manner:" Section 5, Act of July 12, 1919, (P. L. 914).

"Except as to any preferences, rights, limitations, privileges, and restrictions, lawfully granted or imposed with respect to any stock or class thereof, shares of stock without nominal or par value shall be deemed to be an aliquot part of the aggregate capital of the corporation issuing the same, and equal to every other share of stock of the same class:" Section 10, Act of July 12, 1919, (P. L. 914).

"For the purposes of this act, the 'stated capital' of a corporation issuing shares without nominal or par value shall be the capital with which the corporation will begin business, as stated in the certificate of incorporation or reorganization or the joint agreement of merger or consolidation, plus any net additions thereto, or minus any net deductions therefrom: Provided, That 'stated capital' shall not include any net profits or surplus earnings so long and during such period as the same may be paid out in the form of dividends under the provisions of section eight of this act: And provided further,

That 'stated capital' shall not be larger in amount than the excess, as shown by the books of the corporation of its assets over and above its liabilities, other than liabilities on account of shares of stock issued or to be issued by such corporation. In the case of a corporation having outstanding shares with a nominal or par value, as well as shares without a nominal or par value, for the purpose of this act, the portion of 'stated capital' applicable to the shares without a nominal or par value shall be the excess of 'stated capital' over and above the total par value of outstanding shares having a nominal or par value:" Section 3, Act of July 12, 1919, (P. L. 914).

"For the purpose of any statutory provisions limiting the amount of capital stock which a corporation may have, or the relation between indebtedness and capital stock, or prescribing the portion or amount or par value of stock or capital which must be paid in cash or otherwise, whether at the time of formation, before commencing to do business, or from time to time subsequent thereto, the 'stated capital' of a corporation having shares without nominal or par value shall be deemed to be its capital stock or the amount thereof. Nothing in this act contained shall be construed as excepting or relieving a corporation from any requirement of law as to the amount in dollars of paid in capital, in cash or otherwise, which it must have at any time:" Part of section 11, Act of July 12, 1919, (P. L. 914).

97. CAPITALIZATION LIMITED IN CERTAIN CASES.

"It shall be unlawful for any public service company—

(a) To capitalize its franchises, rights, powers, privileges, or right to own and operate or enjoy any such franchises, rights, powers, or privileges, in excess of the amount paid to the Commonwealth or any political subdivision thereof as the consideration for the grant thereof; or to capitalize any lease, or contract of sale, or contract for consolidation or merger of two or more public service companies; or to issue by way of substitution any capital stock, trust certificates, bonds, notes, or other evidences of indebtedness or other securities, for any consolidated or merged company, exceeding the aggregate values of the properties of the companies so consolidated or merged, and any additional sum actually paid in, in cash, and any additional property or labor actually contributed: Provided, That any such public service company or companies may apply to the commission to determine such consideration or value, aforesaid." Article III, section 6, Act of July 26, 1913, (P. L. 1374).

See section 139.

98. PUBLIC SERVICE COMMISSION MUST APPROVE—CERTIFICATE OF VALUATION—CERTIFICATE OF NOTIFICATION.

"The commission shall have general administrative power and authority, as provided in this act, to supervise and regulate all public service companies doing business within this Commonwealth.

Said power and authority shall include the power to inquire into and regulate the * * * * * issuing of stocks, trust certificates, bonds, notes, or other evidences of indetebdness or other securities by public service companies." Article V, section 1, Act of July 26, 1913, (P. L. 1374).

"It shall be lawful for any public service company—

(a) To issue stocks, trust certificates, bonds, notes, or other evidences of indebtedness or other securities, or make any increase in the issue thereof, in the manner prescribed by law, for and only for money, labor done, or money or property actually received, in accordance with the requirements of the Constitution and the laws of the Commonwealth.

All stocks, trust certificates, bonds, notes, or other evidences of indebtedness or other securities, issued in violation of this subsection, and all fictitious increase of stock, trust certificates, bonds, notes, or other indebtedness or securities, shall be void.

Application as hereinafter provided may be made by such public service companies to the commission for a certificate of valuation, to the effect that the provisions of this section have been compiled with as to any stocks, trust certificates, bonds, notes, or other evidences of indebtedness or other securities, issued after the passage of this act; such application shall certify as to the number and amount thereof to be issued and the purpose of such issue, and shall contain such other facts and detailed information, and be in such form, as the commission shall determine and prescribe, and shall be signed and verified by the affidavit of the treasurer, auditor, controller, or other acting fiscal head of the public service company.

(b) Every public service company shall file with the commission, on or prior to the date of issuance of any stock, trust certificates, bonds, notes, or other evidences of indebtedness or other securities, payable at periods of more than twelve months after the date thereof, and now or hereafter to be authorized (unless, upon application as aforesaid, a certificate of valuation shall have been obtained in accordance with the provisions of this act), a certificate to be known as a Certificate of Notification, in such form as the commission may, from time to time, determine and prescribe, which, among other things that may be required by the comission, shall show—

I. The total amount thereof.

II. The number and amount thereof outstanding prior to the date of such certificate, the amount thereof theretofore retired, the amount thereof theretofore undisposed of, and whether such amount is held in the treasury of the public service company as a free asset or pledge, and, if pledged, the terms and conditions of such pledge.

III. The number and amount thereof to be issued and the purpose of such issue, and whether to be sold, pledged, or held in the treasury of the public service company as a free asset; if such securities are to be sold, the terms of sale if a contract for such sale has been made, and, if any part of the consideration to be received therefor is other than money, an accurate and detailed description thereof; if such securities are to be pledged, the terms and conditions of such pledge.

IV. The number and amount thereof remaining unissued.

V. If the issue is of shares of stock, the certificate shall also show the par value thereof, and the number of then outstanding shares previously issued.

VI. The preference or privilege granted to the holders of any such shares of stock, the dates of maturity, rates of interest of any such bonds, notes or other evidences of indebtedness or other securities,

and any conversion rights granted to the holders thereof, and the price, if any, at which such shares or such securities may be redeemed.

(c) Whenever any securities, set forth and described in any Certificate of Notification as pledged or held as a free asset in the treasury of the public service company, shall, subsequent to the filing of such certificate, be sold or repledged or otherwise disposed of by the public service company, such company shall file a further Certificate of Notification to that effect, setting forth therein all such facts as are required by subdivision III, subsection (b), of section four.

(d) All Certificates of Notification furnished to the commission shall be signed and verified by the affidavit of the treasurer, auditor, controller, or other acting fiscal head of the public service company. Such Certificates of Notification shall at all times be deemed to be public records, and open to inspection, and may be given such further publicity as the commission may deem to be for the public interest or welfare.

The provisions of this act contained in regard to Certificates of Valuation, and, unless so required by the commission in regard to Certificates of Notification, shall not apply to the issuance of bonds, notes, or other evidences of indebtedness payable at periods of twelve months or less, nor to the pledging or repledging of stocks, trust certificates, bonds, or other evidences of indebtedness to secure such bonds, notes, or evidences of indebtedness, payable at periods of twelve months or less; but if such bonds, notes or other evidences of indebtedness, shall, in whole or in part, directly or indirectly, be refunded by any issue of bonds, notes, or other evidences of indebtedness running for more than twelve months, then the said mentioned provisions with regard to Certificates of Notification and Valuation shall apply.

Neither the filing with the commission of any Certificate of Notification, nor the issuing by the commission of any Certificate of Public Convenience or Certificate of Valuation, and nothing therein or in this act contained, nor any hearing had, nor finding nor order nor decree made by the commission, nor any act or thing done by any public service company in pursuance thereof, nor any act or thing done by the commission under the provisions of this act, shall in anywise affect the invalidity, if any, of any stocks, trust certificates, bonds, notes, or other evidences of indebtedness or other securities, issued or assumed or guaranteed, prior to the date when this act shall become effective, by any public service company." Article III, section 4, Act of July 26, 1913, (P. L. 1374).

## 99. CAPITAL STOCK MAY BE INCREASED TO ANY AMOUNT.

"The capital stock or indebtedness, or both, of any corporation created by general or special law may, with the consent of the persons or bodies corporate holding the larger amount in value of its stock, be increased to such an amount in the aggregate of each, without regard to the amount of the other, and regardless of any limitation upon the amount of either, prescribed in any general or special law regulating any such corporation, as it shall deem necessary to accomplish and carry on and enlarge the business and purposes of

such corporation Such increase of either may be made at once or from time to time, as the majority in interest of the stockholders shall determine, as aforesaid; and upon the authorizing of any such increase of indebtedness by the stockholders of such corporation, in the manner hereinafter provided, it shall be lawful for such corporation to secure the payment of the principal or interest, or both, of all or any part of such indebtedness, by mortgage, deed of trust, or other pledge or conveyance, by way of security, of all or any part of its real and personal property, rights, privileges, and franchises, and in such manner and upon such terms as its board of directors may determine:" Act February 9th, 1901, (P. L. 3), section 1, as amended by Act April 22nd, 1905, (P. L. 280).

See section 115 for increase of capital stock on merger by agreement.

"Any corporation having shares without any nominal or par value, in pursuance of this act, may increase * * * * * the number of shares which it may issue, in the manner and subject to the terms and conditions now provided by law for the increase * * * * * * of the capital stock of a similar corporation having shares with a par value." Section 9, Act of July 12, 1919, (P. L. 914).

See section 96.

"That corporations, created under and by virtue of the said act, for the purpose of supplying water to the public in cities of the first and second class, shall have the right to increase the amount of their capital, from time to time, to such amount as shall be found requisite and eligible for purposes thereof: Provided, That the amount of capital stock, so authorized, shall not exceed twenty millions of dollars." Section 1, Act of May 25, 1887, (P. L. 269).

It would seem that this act is in effect repealed by the Act of February 9th, 1901, (P. L. 3).

100. PUBLIC SERVICE COMMISSION MUST APPROVE—CERTIFICATE OF VALUATION—CERTIFICATE OF NOTIFICATION.

See section 98.

101. PROCEEDINGS TO INCREASE CAPITAL STOCK.

"Any corporation desirous of increasing its capital stock or indebtedness, or both, as authorized by this act, shall by resolution of its board of directors, adopted by a majority of the entire number thereof, declare such purpose, and thereupon by resolution, similarly adopted, direct that the question of such proposed increase shall be submitted to the stockholders of such corporation for their consent; either

"(A) At any prescribed regular annual meeting or adjournment thereof, the notice whereof, stating inter alia that such subject would be considered thereat, shall have been published once a week for sixty days prior to such meeting in at least one newspaper published in the county, city or borough wherein the chief office or place of business of the corporation is situate. At said meeting the question shall be submitted to the stockholders, and it shall be the duty of the president and secretary of said meeting, by such agencies or methods as to them may seem meet, to ascertain whether the persons and

bodies corporate holding the larger amount in value of the stock of said corporation shall have consented to such increase and upon being so satisfied to certify in duplicate the fact, under oath duly administered: Provided, That should a stock vote be duly demanded at said meeting, it shall be the duty of the president and secretary, in ascertainment of the fact of the consent, to cause such vote to be taken at the same time and place, by the same persons and in the same manner, as the vote for directors or managers of such corporation shall be taken, or,

"(B) At a special meeting of the stockholders, notice of the time, place and object of which shall have been published once a week for sixty days prior to said meeting in at least one newspaper published in the county, city or borough wherein such office or place of business is situated. At such meeting thus called, or any adjournment thereof, an election of the stockholders shall be taken for or against such increase which shall be conducted by three judges, stockholders of such corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent the judge or judges present shall appoint a judge or judges who shall act in the place of the judge or judges absent; and said judges shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same, well and truly and according to law to conduct such election to the best of their ability; and the said judges shall decide upon the qualifications of voters, and when the election is closed count the number of shares voted for and against such increase, and declare whether the persons and bodies corporate holding the larger amount of the stock of such corporation have consented to such an increase or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such increase and the number that voted against such increase, and subscribe and deliver the same to one of the chief officers of said company. Each ballot shall have endorsed thereon the number of shares thereby represented but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting; nor shall any proxy be received, or entitle the holder to vote, unless the same shall bear date and have been executed within four months (two months, Act March 5th, 1903, P. L. 14), next preceding such election or meeting; and it shall be the duty of such corporation to furnish the judges, at said meeting, with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation, with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief:" Act February 9th, 1901, section 2, (P. L. 3).

As to when publication of notice in German newspapers is required, see section 8.

As to publication in legal journals, see section 8.

"It shall be the duty of such corporation, if consent is given to such increase, to file in the office of the Secretary of the Commonwealth, within thirty days after such election, one of the copies of the certificates of the president and secretary of the annual meeting, or

one of the copies of the return of such election at the special meeting hereinbefore provided for, with a copy of the resolution and notice calling the same thereto annexed; and thereafter the increase may be made at such time or times as shall be determined by the directors. Upon the actual increase of the capital stock or indebtedness of such corporation, made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the Secretary of the Commonwealth, under oath, of the amount of such increase actually made, and concurrently therewith such corporation shall pay to the State Treasurer, for the use of the Commonwealth, such bonus on the actual increase shown by said return as shall then be prescribed by law. In case of neglect or omission to make said return, such corporation shall be subject to a penalty of five thousand dollars, in addition to the bonus, which penalty shall be collected on an account settled by the Auditor General and State Treasurer as accounts for taxes due the Commonwealth are settled and collected; and the Secretary of the Commonwealth shall cause said return to be recorded in a book for that purpose and furnish a copy of the same to the Auditor General:" Act February 9th, 1901, section 3, (P. L. 5).

## 102. WAIVER OF NOTICE OF ELECTION TO INCREASE CAPITAL STOCK.

The constitutional provision that sixty days' notice of a meeting for the election upon a proposed increase of capital stock shall be given, may be waived: In re Bellefonte & Buffalo Run Railroad Co., 2 Chest. Co. 128; Op. Atty. Gen., 1895-96, 387; but the holding of the meeting itself cannot be waived; In re Tally-on-Top Salesbook Co., 17 Pa. C. C. 199.

## 103. CAPITAL STOCK MAY BE DECREASED.

"The capital stock of any corporation created by general or special law may be reduced from time to time by the consent of the persons or bodies corporate holding the larger amount in value of the stock of such corporation, provided that such reductions shall not be below the minimum amount of capital stock required by law for the formation of corporations formed for similar purposes:" Act June 8th, 1893, section 1, (P. L. 351), as amended by Act April 22nd, 1905, (P. L. 264).

"Any corporation created under the provisions of this act, and any corporation of the classes named in the second section hereof, that is now in existence by virtue of any law of this Commonwealth, may reduce its capital stock or alter and change the par value of the shares thereof, by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of this act: * * * *" Section 23, act of April 29, 1874, (P. L. 73), as amended by section 1, act of June 2, 1915, (P. L. 724).

"Any corporation having shares without any nominal or par value, in pursuance of this act, may * * * * * reduce the number of shares which it may issue, in the manner and subject to the terms and con-

ditions now provided by law for the * * * * * reduction of the capital stock of a similar corporation having shares with a par value:" Section 9, act of July 12, 1919, (P. L. 914).

See section 96.

104. PROCEEDINGS TO DECREASE CAPITAL STOCK.

"Any corporation desirous of reducing its capital stock as provided by this act shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held in its chief office or place of business in this Commonwealth, and notice of the time, place and object of said meeting shall be published once a week for sixty days prior to such meeting in at least one newspaper published in the county, city or borough wherein such office or place of business is situate:" Act June 8th, 1893, section 2, (P. L. 352).

As to when publication of notice in German newspapers is required, see section 8.

As to publication of notice in legal journals, see section 8.

"At the meeting called pursuant to the second section of this act, an election of the stockholders of such corporation, shall be taken for or against such reduction, which shall be conducted by three judges, stockholders of said corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent, the judge or judges present shall appoint a judge or judges who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same well and truly and according to law, to conduct such elections to the best of their ability, and the said judges shall decide upon the qualification of voters, and when the election is closed count the number of shares voted for and against such reduction, and declare whether the persons or bodies corporate holding the larger amount of the stock of such corporation have consented to such reduction or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such reduction and the number that voted against such reduction, and subscribe and deliver the same to one of the chief officers of said company:" Act June 8th, 1893, section 3, (P. L. 352).

"Each ballot shall have endorsed thereon the number of shares thereby represented, but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be receive or entitle the holder to vote unless the same shall bear date and have been executed within three months" (two months, Act March 5th, 1903, P. L. 14), "next preceding such election or meeting, and it shall be the duty of such corporation to furnish the judges at said meeting with a statement of the amount of its capital stock with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief:" Act June 8th, 1893, section 4, (P. L. 352).

"It shall be the duty of such corporation, if consent is given to such reduction, to file in the office of the Secretary of the Common-

wealth, within thirty days after such election or meeting, one of the copies of the return of such election provided for by the third section of this act, with a copy of the resolution and notice calling the same thereto annexed, and upon the reduction of the capital stock of such corporation made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the Secretary of the Commonwealth, under oath, of the amount of such reduction, and in case of neglect or omission so to do, such corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the Auditor General and State Treasurer as accounts for taxes due the Commonwealth are settled and collected, and the Secretary of the Commonwealth shall cause said return to be recorded in a book kept for that purpose and furnish a certified copy of the same to the Auditor General:" Act June 8th, 1893, section 5, (P. L. 352).

## B. INDEBTEDNESS.

### 105. NO IMPLIED POWER TO CREATE AN INDEBTEDNESS SECURED BY MORTGAGE EXISTS.

Companies exercising public franchises, including water companies have no implied power to mortgage their franchises, nor the property essential to the exercise thereof, and they can consequently not do so without express statutory authority: Steiner's Appeal, 27 Pa. 313; Wood v. Bedford & Bridgeport Railroad Co., 8 Phila. 94. They may, however, mortgage such property as is not essential to the enjoyment of their public franchises: Plymouth Railroad Co. v. Colwell, 39 Pa. 337.

### 106. AUTHORITY TO MORTGAGE.

"It shall be lawful for all corporations to borrow money or to secure any indebtedness created by them, by issuing bonds, with or without coupon attached thereto, and to secure the same by a mortgage or mortgages to be given and executed to a trustee or trustees, for the use of the bondholders, upon their real estate and machinery, or on their real estate alone, to an amount not exceeding one-half of the capital stock of the corporation paid in, and at a rate of interest not exceeding six per centum: Provided, That it shall be lawful for such corporations as belong to the classes named in clauses four, five, six, seven, nine and eleven of corporations for profit, of the second class, as set forth in section two of the act of which this is a supplement, and also for such corporations as belong to the class named in clause twenty-four, section two, of the act of assembly approved April seventeenth, one thousand eight hundred and seventy-six, so to borrow money and so to secure the payment of the same, by a mortgage or mortgages on its property and franchises, to the amount not exceeding double the amount of the capital stock of the corporation actually paid in, and at a rate of interest not exceeding six per centum, and this section shall not be construed to prevent mortgages for a greater amount and at a higher rate of interest, where the power to make the same is expressly given by the terms of this statute to certain classes of corporations, or is contained in

the character of any private corporations accepting this act, or in the statutes under which certain other classes thereof are by the provisions of this statute to be controlled, governed and managed:" Act April 29th, 1874, section 13, as amended by Act May 21st, 1889, (P. L. 257).

"It shall be lawful for any gas company or water company, incorporated under the provisions of the act of the general assembly of this commonwealth, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, to borrow any sums of money not exceeding in the aggregate one-half of the capital stock of such company paid in, at a rate of interest not exceeding amounts now allowed by law, and issue bonds therefor with coupons or interest warrants attached, and secure the payment of such bonds and interest warrants by a mortgage to a trustee or trustees of all its real and personal property, rights, privileges and franchises." Section 1, act of March 24, 1877, (P. L. 39, No. 35).

### 107. ADDITIONAL AUTHORITY TO MORTGAGE GIVEN WATER POWER COMPANIES.

The act of July 2nd, 1895, (P. L. 432), provides that corporations for the supply, storage or transportation of water and water power for commercial and manufacturing purposes be and they are authorized and empowered "to mortgage their said property, real, personal and mixed and franchises to any person or corporation of this state or elsewhere, either directly or as trustee, to secure the payment of such indebtedness as may be incurred or created for the purpose of constructing and erecting the said works, or as a guaranty for the faithful performance of contracts and covenants on the part of said water and water power company to be performed, including the guaranty of the payment of the bonds and interest thereon of any other corporation party to such contract."

### 108. INDEBTEDNESS MAY BE INCREASED TO ANY AMOUNT.

"The capital stock or indebtedness, or both, of any corporation created by general or special law may, with the consent of the persons or bodies corporate holding the larger amount in value of its stock, be increased to such an amount in the aggregate of each, without regard to the amount of the other, and regardless of any limitation upon the amount of either, prescribed in any general or special law regulating any such corporation, as it shall deem necessary to accomplish and carry on and enlarge the business and purposes of such corporation. Such increase of either may be made at once or from time to time, as the majority in interest of the stockholders shall determine, as aforesaid; and upon the authorizing of any such increase of indebtedness by the stockholders of such corporation, in the manner hereinafter provided, it shall be lawful for such corporation to secure the payment of the principal or interest, or both, of all or any part of such indebtedness, by mortgage, deed of trust, or either pledge or conveyance, by way of security, of all or any part of its real and personal property, rights, privileges, and fran-

chises, and in such manner and upon such terms as its board of directors may determine:" Act February 9th, 1901, (P. L. 3), section 1, as amended by Act April 22nd, 1905, (P. L. 280).

109. PUBLIC SERVICE COMMISSION MUST APPROVE CERTIFICATE OF VALUATION—CERTIFICATE OF NOTIFICATION.

See section 98.

110. PROCEEDINGS TO INCREASE INDEBTEDNESS.

The proceedings to increase indebtedness are identical with the proceedings to increase capital stock, as outlined in sections 2 and 3 of the act of February 9th, 1901, (P. L. 3). (See section 101).

111. WAIVER OF NOTICE OF ELECTION TO INCREASE INDEBTEDNESS.

While it has been held that the sixty days' notice of a meeting for the election to increase capital stock may be waived, it has been held that the notice of the meeting for an election to increase indebtedness may not be so waived: Mass. v. Poughkeepsie & N. E. R. R. Co., 1 Mona. 497.

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## ARTICLE XIII.

### MERGER AND CONSOLIDATION, SALE, LEASE AND OWNERSHIP OF STOCK.

### A. MERGER AND CONSOLIDATION.

(1)

112. MERGER AND CONSOLIDATION UNDER ACT OF 1901.

"It shall be lawful for any corporation now or hereafter organized under, or accepting the provisions of, the act, entitled, 'An act to provide for the incorporation and regulation of certain corporations,' approved April twenty-ninth, one thousand eight hundred and seventy-four, or of the supplements thereto, or of any other Act of Assembly authorizing the formation of corporations, to buy and own the capital stock of, and to merge its corporate rights, powers and privileges with and into those of, any other corporation, so that by virtue of the act such corporations may consolidate, and so that all the property, rights, franchises and privileges then by law vested in either of such corporations, so merged, shall be transferred to and vested in the corporation with which such merger shall be made:" Act May 29th, 1901, section 1, (P. L. 349).

See sections 124 to 131.

113. MERGER AND CONSOLIDATION UNDER ACT OF 1874.

"Any corporation or corporations for any of the purposes named and covered by the provisions of this act, heretofore created by any special act or acts, or in existence under the provisions of any general law of this commonwealth, shall be entitled to all the privileges, immunities, franchises and powers conferred by this act upon corporations to be created under the same, upon filing in the office of the secretary of the commonwealth a certificate of a single corporation, or a joint certificate if two or more corporations incorporated for and doing the same kind of business, under the seal or seals of said corporation or corporations, accepting the provisions of the constitution and of this act, duly authorized by a meeting of stockholders called for that purpose; and upon such acceptance and approval by the Governor, he shall issue letters patent to said corporations, or if two or more corporations, to said corporations as one corporation, under such name as shall be designated by said corporation or corporations in said single or joint certificate, together with the amount and capital, number of shares and par value thereof, as shall be designated by said corporation or corporations in said certificate: Provided, That where two or more corporations shall make a joint certificate as aforesaid, and letters patent shall be issued to said new corporation, said corporations shall thenceforth be deemed, held and taken to be merged and consolidated, and be subject to all the limitations and liabilities of this act:" Part of section 26, act of April 29, 1874, (P. L. 73), as amended by section 6, act of April 17, 1876, (P. L. 30).

114. AGREEMENT CANNOT EXTEND TERRITORIAL LIMITS OF EXCLUSIVE FRANCHISE.

The act of May 29th, 1901, (P. L. 349), section 1, authorizing the merger and consolidation, further provided that "nothing in this act contained shall extend or enlarge beyond its former territorial limits the exclusive franchise of any * * * * * water company."

115. CAPITALIZATION OF MERGED COMPANIES LIMITED.

"It shall be unlawful for any public service company—

To capitalize its franchises, rights, powers, privileges or right to own and operate or enjoy any such franchises, rights, powers, or privileges, in excess if the amount paid to the Commonwealth or any political subdivision thereof as the consideration for the grant thereof; or to capitalize any lease, or contract of sale, or contract for consolidation or merger of two or more public service companies; or to issue by way of substitution any capital stock, trust certificates, bonds, notes, or other evidences of indebtedness or other securities, for any consolidated or merged company, exceeding the aggregate values of the properties of the companies so consolidated or merged, and any additional sum actually paid in, in cash, and any additional property or labor actually contributed: Provided, That any such public service company or companies may apply to the commission to determine such consideration or value, aforesaid:" Clause (a), section 6, article III, act of July 26, 1913, (P. L. 1374).

An agreement of consolidation and merger, under the provisions of the act of May 29th, 1901, (P. L. 349), cannot increase capital stock of a new company over the combined capital stocks of the underlying companies: In re Bellevue & Perrysville Street Railway Co. and Howard & East Street Railway Co., Op. Atty, Gen., 1903-04, p. 42; Bellevue & Derry Street Railway Co. and Bradenville & Derry Street Railway Co., Op. Atty. Gen. 1903-04, p. 56; Stroudsburg, etc., Telephone Co. and Monroe Telephone Co.'s Consolidation, 33 Pa. C. C. 321; 10 Dauph, 70, 16 Dist. 601.

## 116. PROCEEDINGS TO MERGE AND CONSOLIDATE.

"Said merger or consolidation shall be made under the conditions, provisions and restrictions, and with the powers herein set forth, to wit:

"I. The directors of each corporation may enter into a joint agreement, under the corporate seal of each corporation, for the merger and consolidation of said corporations; prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each of said corporations into the stock of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect the said consolidation and merger; but said agreement shall not be effective unless the same shall be approved by the stockholders of said corporations, in the manner hereinafter provided.

"II. Said agreement shall be submitted to the stockholders of each of said corporations, at separate special meetings, of the time, place and object of which respective meetings due notice shall be given by publication, once a week for two successive weeks before said respective meetings, in at least one newspaper in the county or each of the counties in which the principal offices of said respective corporations shall be situate; and at said meetings the said agreement of the directors shall be considered, and a vote of the stockholders in person or by proxy shall be taken, by ballot, for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote; and if a majority in amount of the entire capital stock of each of said corporations shall vote in favor of said agreement, merger and consolidation, then that fact shall be certified by the secretary of each corporation, under the seal thereof, and said certificates, together with the said agreement or a copy thereof, shall be filed in the office of the Secretary of the Commonwealth, whereupon the said agreement shall be deemed and taken to be the act of consolidation of said corporations:" Act May 29th, 1901, (P. L. 349), Section 2.

It is doubtful if the publication of notice for two weeks can be waived: In re Bellevue & Perryville Street Railway Co., 32 Pa. C. C. 243; 15 Dist. 510; 8 Dauph. 281.

As to when publcation of notice in German newspapers is required, see section 8.

As to publication of notice in legal journals, see section 8.

117. AGREEMENT MUST BE APPROVED BY THE PUBLIC SERVICE COMMISSION.

"Upon like approval of the (Public Service) Commission first had and obtained, as aforesaid, and upon compliance with existing laws, and not otherwise, it shall be lawful—

"(c) For any public service company to sell, assign, transfer, lease, consolidate, or merge its property, powers, franchises, or privileges, or any of them, to or with any other corporation or person:" Article III, section 3, act of July 26, 1913, (P. L. 1374).

118. AGREEMENT MUST BE APPROVED BY WATER SUPPLY COMMISSION.

"From and after the passage of this act, no agreement for the merger and consolidation of two or more corporations heretofore or hereafter formed for the supply of water to the public, or for the supply, storage, and transportation of water and water power for commercial and manufacturing purposes, or of any other water or water power companies, shall be approved by the Governor, nor shall letters patent be issued creating and erecting the parties to said agreement into a new corporation, unless said agreement is first submitted to, and has received the approval of, a majority of the members of the Water Supply Commission of Pennsylvania:" Act June 7th, 1907, section 2, (P. L. 455).

119. AGREEMENT MUST DESIGNATE FUTURE SOURCE OF SUPPLY.

The above quoted act of June 7th, 1907, (P. L. 455), section 2, further provides that such agreement shall not be approved by the Governor "unless said agreement shall designate the river, stream or other body of water from which it is proposed to take or use water or water power thereafter, and also, as near as may be, the points on said river, stream or other body of water, between which said water or water power is proposed to be taken or used; nor unless said agreement shall stipulate that the right heretofore existing in any of the corporations, parties to said agreement, to take or use water or water power from any river, stream or other body of water, or portions thereof, not so designated, shall be and are thereby forfeited and surrendered, and shall revert to this Commonwealth."

See section 28.

120. RIGHTS OF EMINENT DOMAIN OVER WATER FORFEITED UPON CONSOLIDATION AND MERGER.

"No such agreement of merger and consolidation shall be approved by the said Water Supply Commission of Pennsylvania, nor by the Governor, until each of the corporations, parties thereto, shall have filed in the office of The Water Supply Commission of Pennsylvania, a written acceptance, under the seal of said corporation and authorized by a majority of the stockholders thereof, both of this act and of the act approved April thirteenth, one thousand nine hundred and five, entitled 'An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorpo-

rated under law,' agreeing to be subject to and bound by the provisions of both of said acts, with like effect as if said corporations had been formed subsequently to the passage of both of said acts; and shall, also, have filed a certified copy of said acceptance in the office of the Secretary of the Commonwealth:" Act June 7th, 1907, section 2, (P. L. 455).

121. COMPLETION OF MERGER AND CONSOLIDATION.

"Upon the filing of said certificates and agreement, or copy of agreement, in the office of the Secretary of the Commonwealth, the said merger shall be deemed to have taken place, and the said corporations to be one corporation under the name adopted in and by said agreement, possessing all the rights, privileges and franchises theretofore vested in each of them, and all the estate and property, real and personal, and the rights of action of each of said corporations, shall be deemed and taken to be transferred to and vested in the said new corporation without any further act or deed: Provided, That all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts, duties and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties and liabilities had been contracted by it. But such merger and consolidation shall not be complete, and no such consolidated corporation shall do any business of any kind, until it shall have first obtained from the Governor of the Commonwealth new Letters Patent, and shall have paid to the State Treasurer a bonus of one-third of one per centum on all its corporate stock in excess of the amount of the capital stock of the several corporations so consolidating, upon which the bonus required by law had been theretofore paid: And provided further, that new letters patent of such consolidated corporation shall not be issued by the Governor of the Commonwealth until each and every corporation, entering and forming the consolidated corporation, shall have filed with the Secretary of the Commonwealth a certificate from the Auditor General of the Commonwealth, setting forth that all reports required by the Auditor General of the Commonwealth have been duly filed, and that all taxes due the Commonwealth of Pennsylvania have been paid:" Act May 29th, 1901, section 3, (P. L. 349), as amended by Act March 31st, 1905, (P. L. 96).

"A certified copy of said certificate and agreement or copy of agreement, so to be filed in the office of the Secretary of the Commonwealth, shall be evidence of the lawful holding and action of such meetings, and of the merger and consolidation of said corporations:" Act May 29th, 1901, section 4, (P. L. 349).

The agreement of consolidation and merger need not be recorded in the office of the Recorder of Deeds: Keller v. Water Co., 34 Super. Ct 301.

## 122. REMEDY FOR DISSENTING STOCKHOLDERS.

"If any stockholder or stockholders of any corporation which shall become a party to an agreement of merger and consolidation hereunder, shall be dissatisfied with or object to such consolidation, and shall have voted against the same at the stockholders' meeting, it shall and may be lawful for any such stockholder or stockholders, within thirty days after the adoption of said agreement of merger and consolidation by the stockholders as herein provided, and upon reasonable notice to said corporation, to apply by petition to any court of common pleas of the county in which the chief office of such corporation may be situate, or to a judge of said court in vacation, if no such court sits during said period, to appoint three disinterested persons to estimate and appraise the damages, if any, done to such stockholder or stockholders by said consolidation. Upon such petition, it shall be the duty of said court, or judge, to make such appointment; and the award of the persons so appointed, or of a majority of them, when confirmed by the said court, shall be final and conclusive; and the persons so appointed shall also appraise the share or shares of said stockholders in the said corporation, at the full market value thereof, without regard to any appreciation or depreciation in consequence of the said consolidation, which appraisement, when confirmed by the said court, shall be final and conclusive; and the said corporation may, at its election, either pay to the said stockholder or stockholders the amount of damages so found and awarded, if any, or the value of the stock so ascertained; and upon the payment of the value of the stock as aforesaid; the said stockholder or stockholders shall transfer the stock so held by them to the said corporation, to be disposed of by the directors thereof or to be retained for the benefit of the other stockholders; and in case the value of said stock, as aforesaid, shall not be so paid within thirty days after the said award shall have been confirmed by said court, the damages so found and confirmed shall be a judgment against said corporation, and may be collected as other judgments in said court are by law recoverable:" Act May 29th, 1901, section 5, (P. L. 349).

Where a dissenting stockholder has not voted against the agreement of merger and consolidation his remedy is by bill in equity. Barnett v. Philadelphia Market Co., 218 Pa. 649.

Where a dissenting stockholder has voted against the agreement of merger and consolidation he is not obliged to proceed under Section 5 of the Act of May 29th, 1901, but may proceed by bill in equity: Barnett v. Philadelphia Market Co., 218 Pa. 649.

## 123. WHAT COMPANIES MAY MERGE AND CONSOLIDATE.

The act of May 29th, 1901, (P. L. 349), authorizing the merger and consolidation of corporations, is general in its terms, and would seem from its wording to authorize the merger and consolidation of any corporation with any other corporation of whatever kind. It was held by Governor Pennypacker, however, in re Hummelstown Water Co. and Hummelstown Electric Light, Heat and Power Co., 15 Dist. 532, that this was not the proper construction of the act, but that it was intended to apply only to corporations, engaged in the same or a similar kind of business, and that, therefore, a water company could not be merged and consolidated with an electric light, heat and power

company. It would seem, however, that water companies, although of different classes, may merge and consolidate with one another, because engaged in the same general or a similar kind of business. Thus, it has been held that under the act a company for the manufacture and supply of gas for light, one for the manufacture and supply of gas for fuel, and one for the supply of light by means of electricity, may merge and consolidate. In this case the Supreme Court held that the corporations could merge and consolidate their "rights, privileges, and franchises, which are alike in their general features, and authorized to be exercised by the same general law, in one body politic by a different name, but for the same purposes, in the same territorial limits:" Motter v. Kennett Gas Light Co., et al., 212 Pa. 613.

124. MERGER AND CONSOLIDATION UNDER ACT OF 1909.

(2)

"It shall be lawful for any corporation, now or hereafter organized under the provisions of any general or special act of Assembly, authorizing the formation of any corporation or corporations, to merge its corporate rights, franchises, powers, and privileges with and into those of any other corporation or corporations transacting the same or a similar line of business, so that by virtue of this act such corporations may consolidate, and so that all the property, rights, franchises, and privileges then by law vested in either of such corporations, so merged, shall be transferred to and vested in the corporation into which such merger shall be made:" Act May 3rd, 1909, section 1, (P. L. 408).

See sections 112 to 123.

125. AGREEMENT CANNOT EXTEND TERRITORIAL LIMITS OF EXCLUSIVE FRANCHISE.

The act of May 3rd, 1909, (P. L. 408), section 1, authorizing the merger and consolidation, further provides that "nothing in this act contained shall extend or enlarge beyond its former territorial limits the exclusive franchise of any * * * * * water company."

126. PROCEEDINGS TO MERGE AND CONSOLIDATE.

"Said merger or consolidation shall be made under the conditions, provisions, and restrictions, and with the powers, herein set forth; to wit:

"1. The directors of each corporations shall enter into a joint agreement, under the corporate seal of each corporation, for the merger and consolidation of said corporations; prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers, and their places of residence, the number of shares of the capital stock, the amount or par value of each share and the manner of converting the capital stock of each of said corporations into the stock of new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect the said consolidation and merger; but said agreement shall not be effective unless the same shall be approved by the stockholders of said corporations, in the manner hereinafter provided.

"II. Said agreement shall be submitted to the stockholders of each of said corporations, at separate special meetings or at any annual meetings, of the time, place and object of which respective meetings due notice shall be given by publication, once a week for two consecutive weeks before said respective meetings, in at least one newspaper in the county or in each of the counties in which the principal office of said respective corporations shall be situate,—excepting in the case of the merger or consolidation of corporations which, upon their original incorporation, are required by the Constitution to publish notice of intention to incorporate for a longer period than two weeks, in which case notice by publication shall be as required by the Constitution,—and at said meetings the said agreement of the directors shall be considered, and a vote of the stockholders in person or by proxy shall be taken, by ballot, for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote; and if a majority in amount of the entire capital stock of each of said corporations shall vote in favor of said agreement, merger and consolidation, then that fact shall be certified by the secretary of each corporation, under the corporate seal thereof, and said certificates, together with the said agreement or a copy thereof, shall be filed in the office of the Secretary of the Commonwealth, who shall forthwith present the same to the Governor for his approval, and when approved by the Governor the said agreement shall be deemed and taken to be the act of consolidation of said corporation:" Act of May 3rd, 1909, section 2, (P. L. 409).

As to when publication of notice in German newspapers is required, see section 8.

As to publication of notice in legal journals, see section 8.

### 127. AGREEMENT MUST BE APPROVED BY THE WATER SUPPLY COMMISSION.

"From and after the passage of this act, no agreement for the merger and consolidation of two or more corporations heretofore or hereafter formed for the supply of water to the public, or for the supply, storage, and transportation of water and water power for commercial and mnanufacturing purposes, or of any other water or water power companies, shall be approved by the Governor, nor shall letters patent be issued creating and erecting the parties to said agreement into a new corporation, unless said agreement is first submitted to, and has received the approval of, a majority of the members of the Water Supply Commission of Pennsylvania:" Act June 7th, 1907, section 2, (P. L. 455).

### 128. AGREEMENT MUST DESIGNATE FUTURE SOURCE OF SUPPLY.

The above quoted Act of June 7th, 1907, (P. L. 455), section 2, further provides that such agreement shall not be approved by the Governor "unless said agreement shall designate the river, stream or other body of water from which it is proposed to take or use water or water power thereafter, and also, as near as may be, the points on said river, stream or other body of water, between which said water or water power is proposed to be taken or used; nor unless said agreement shall stipulate that the right heretofore existing

in any of the corporations, parties to said agreement, to take or use water or water power from any river, stream or other body of water, or portions thereof, not so designated, shall be and are thereby forfeited and surrendered, and shall revert to this Commonwealth."

See section 28.

## 129. RIGHTS OF EMINENT DOMAIN OVER WATER FORFEITED UPON CONSOLIDATION AND MERGER.

"No such agreement of merger and consolidation shall be approved by the said Water Supply Commission of Pennsylvania, nor by the Governor, until each of the corporations, parties thereto, shall have filed in the office of The Water Supply Commission of Pennsylvania a written acceptance, under the seal of said corporation and authorized by a majority of the stockholders thereof, both of this act and of the act approved April thirteenth, one thousand nine hundred and five, entitled 'An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law,' agreeing to be subject to and bound by the provisions of both of said acts, with like effect as if said corporations had been formed subsequently to the passage of both of said acts; and shall, also, have filed a certified copy of said acceptance in the office of the Secretary of the Commonwealth:" Act June 7th, 1907, section 2, (P. L. 455).

## 130. COMPLETION OF MERGER AND CONSOLIDATION.

"Upon the filing of said certificates and agreement, or copy of the agreement, in the office of the Secretary of the Commonwealth, and upon the issuing of new letters patent thereon by the Governor, the said merger shall be deemed to have taken place, and the said corporations to be one corporation under the name adopted in and by said agreement, possessing all the rights, privileges, and franchises theretofore vested in each of them; and all the estate and property, real and personal, and rights of action, of each of said corporations, shall be deemed and taken to be transferred to and vested in the said new corporation, without any further act or deed: Provided, That all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, limited in lien to the property affected by such liens at the time of the creation of the same, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts not of record, duties, and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties, and liabilities had been contracted by it. But such merger and consolidation shall not be complete, and no such consolidated corporation shall do any business of any kind, until it shall have first obtained from the Governor of the Commonwealth new letters patent, and shall have paid to the State Treasurer a bonus, as prescribed by law, upon all its capital stock in excess of the amount of capital stock of the several corporations so consolidating, upon which the bonus required by law has been theretofore paid: And provided further, That new letters patent of such consolidated corporation

shall not be issued by the Governor of the Commonwealth, until each corporation entering into and forming the consolidated corporation shall have filed with the Secretary of the Commonwealth, a certificate from the Auditor General of the Commonwealth, setting forth that all reports required by the Auditor General of the Commonwealth have been duly filed to the date of the proposed merger, and that all taxes due the Commonwealth of Pennsylvania have been paid, up to and including said date:" Act of May 3rd, 1909, (P. L. 408), section 3, as amended by Act of April 29th, 1915, (P. L. 205).

"A certified copy of said certificate and agreement, or copy of agreement, so to be filed in the office of the Secretary of the Commonwealth, shall be evidence of the lawful holding and action of such meetings, and of the merger and consolidation of said corporations: Act of May 3rd, 1909, section 4, (P. L. 408).

131. REMEDY FOR DISSENTING STOCKHOLDERS.

If any stockholder or stockholders of any corporation, which shall become a party to an agreement of merger and consolidation hereunder, shall be dissatisfied with or object to such consolidation, and shall have voted against the same at the stockholders' meeting, it shall and may be lawful for any such stockholder or stockholders, within thirty days after the adoption of said agreement of merger and consolidation by the stockholders, as herein provided, and upon reasonable notice to said corporation, to apply by petition to any court of common pleas of the county in which the chief office of such corporation may be situate, or to a judge of said court in vacation, if no such court sits during said period, to appoint three disinterested persons to estimate and appraise the damages, if any, done to such stockholder or stockholders by said consolidation. Upon such petition, it shall be the duty of said court or judge to make such appointment, and the award of the persons so appointed, or of a majority of them when confirmed by the said court, shall be final and conclusive; and the persons so appointed shall also appraise the share or shares of said stockholders, in the said corporation, at the full market value thereof, without regard to any appreciation or depreciation in consequence of the said consolidation; which appraisement, when confirmed by the said court, shall be final and conclusive; and the said corporation may, at its election, either pay to the said stockholder or stockholders the amount of damages so found and awarded, if any, or the value of the stock so ascertained; and upon the payment of the value of the stock, as aforesaid; the said stockholder or stockholders shall transfer the stock so held by them to the said corporation, to be disposed of by the directors thereof or to be retained for the benefit of the other stockholders; and in case the value of said stock, as aforesaid, shall not be so paid within thirty days after the said award shall have been confirmed by said court, the damages so found and confirmed shall be a judgment against said corporation, and may be collected as other judgments in said court are by law recoverable:" Act of May 3rd, 1909, section 5, (P. L. 408.)

## B. SALE.

### 132. SALE OF PROPERTY AND FRANCHISES AUTHORIZED.

"Any corporation created under the provisions of this act, and any corporation of the classes named in the second section hereof, that is now in existence by virtue of any law of this Commowealth, may reduce its capital stock or alter and change the par value of the shares thereof, by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of this act; *and it shall be lawful for any corporation in the same manner to sell, assign, dispose of and convey to any corporation* created under or accepting the provisions of this act, its franchises, and all its property, real, personal and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid: Provided, That the returns required by said section shall not be filed in the office of the Secretary of the Commonwealth until each and every corporation, so selling, assigning, disposing, and conveying such franchises and property, shall have filed with the Secretary of the Commonwealth a certificate from the Auditor General of the Commonwealth, setting forth that all reports required by the Auditor General of the Commonwealth have been duly filed to the date of the proposed sale, assignment, disposition and conveyance; and that all taxes due the Commonwealth of Pennsylvania have been paid up to and including such date:" Act April 29th, 1874, (P. L. 73), section 23, as amended by the Acts of April 17th, 1876, section 5, (P. L. 30), and June 2nd, 1915, (P. L. 724).

Under this act all water companies, whether created before or after the Act of April 17th, 1876, may sell, assign, dispose of and convey their franchises and property to other water companies, and such property and franchises will thereupon become vested in the purchasing company: Hey v. Springfield Water Co., 207 Pa. 38.

This act is express legislative authority for one water company to purchase the franchises and property of another. The purchasing water company may acquire the franchises and property of other water companies whose territory is not included in the charter of the purchasing company. Greensburg Boro. v. Westmoreland Water Co. 240 Pa. 481.

### 133. PUBLIC SERVICE COMMISSION MUST APPROVE.

"Upon like approval of the (Public Service) Commission first had and obtained, as aforesaid, and upon compliance with existing laws, and not otherwise, it shall be lawful:

"(c) For any public service company to sell, assign, transfer, lease, consolidate, or merge its property, powers, franchises, or privileges, or any of them, to or with any other corporation or person:" Article III, section 3, Act of July 26, 1913, (P. L. 1374).

### 134. PROCEEDINGS TO SELL PROPERTY AND FRANCHISES.

The above quoted section 23 of the Act of April 29th, 1874, as amended, providing for the sale, assignment, disposition and conveyance of the property and franchises of one corporation to another,

provides that such sale shall be made in the manner and under the regulations prescribed in the nineteenth, twentieth, twenty-first and twenty-second sections of the Act of April 29th, 1874. The said sections were the original method under the Act of April 29th, 1874, of increasing the capital stock or indebtedness of a corporation, and while they have been superseded by the provisions of the Act of February 9th, 1901, (P. L. 3), for such purposes, they still provide the method for the sale of the property and franchises of one corporation to another, and their provisions are as follows:

"Any such corporation desirous of increasing its capital stock or indebtedness as provided by this act, shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held at its chief office or place of business in this Commonwealth; and notice of the time, place and object of said meeting shall be published once a week for sixty days prior to such meeting, in at least one newspaper published in the county, city or borough wherein such office or place of business is situate:" Act April 29th, 1874, section 19, (P. L. 73).

As to when publication of notice in German newspapers is required, see section 8.

"At the meeting called, pursuant to the nineteenth section of this act, an election of the stockholders of such corporation shall be taken for or against such increase, which shall be conducted by three judges, stockholders of said corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent, the judge or judges present shall appoint a judge or judges, who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same, well and truly, and according to law, to conduct such election to the best of their ability; and the said judges shall decide upon the qualification of voters, and when the election is closed count the number of shares voted for and against such increase, and declare whether the persons or bodies corporate holding the larger amount of the stock of such corporation have consented to such increase, or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such increase, and the number that voted against such increase, and subscribe and deliver the same to one of the chief officers of said company:" Act April 29th, 1874, section 20, (P. L. 73).

"Each ballot shall have endorsed thereon the number of shares thereby represented, and be signed by the holder thereof, or by the person holding a proxy therefor, but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be received, or entitle the holder to vote, unless the same shall bear date and have been executed within three months" (two months, Act March 5th, 1903, P. L. 14), "next preceding such election or meeting; and it shall be the duty of such corporation to furnish the judges at said meeting with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation, with an af-

fidavit thereto annexed, that the same is true and correct to the best of his knowledge and belief:" Act April 29th, 1874, section 21, (P. L. 73).

"It shall be the duty of such corporation, if consent is given to such increase, to file in the office of the Secretary of the Commonwealth, within thirty days after such election or meeting, one of the copies of the return of such an election provided for by the twentieth section of this act, with a copy of the resolution and notice calling same thereto annexed; and upon the increase of the capital stock or indebtedness of such corporation made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the Secretary of the Commonwealth, under oath, of the amount of such increase and terms of the same, that is to say, the terms on which additional stock is issued; and in case of neglect or omission so to do, the corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the Auditor General and State Treasurer, as accounts for taxes due the Commonwealth are settled and collected; and the Secretary of the Commonwealth shall cause said returns to be recorded in a book to be kept for that purpose, and furnish a certified copy of the same to the Auditor General, and the corporation shall have the right to recover the same from the officer neglecting or omitting to file the return as aforesaid:" Act April 29th, 1874, section 22, (P. L. 73).

## 135. FUTURE SOURCE OF SUPPLY MUST BE DESIGNATED AND APPROVED BY WATER SUPPLY COMMISSION BEFORE SALE.

"From and after the passage of this act, no sale, assignment, disposition, transfer, and conveyance of the franchises, and all the property, real, personal, and mixed, of any corporation heretofore or hereafter formed for the supply of water to the public, or for the supply, storage, and transportation of water and water power for commercial and manufacturing purposes, or of any other water or water power company, to any other such corporation, shall be valid until a certificate, authorized by a majority of the stockholders of the corporation so purchasing, and duly executed by the president and secretary thereof, under the seal of said corporation, designating the river, stream, or other body of water, and, as near as may be, the points on the said river, stream, or other body of water, between which it is proposed to take or use water or water power thereafter, and stipulating that the right heretofore existing in either the corporation so purchasing or the corporation so selling to take or use water or water power from any river, stream, or other body of water, or portions thereof, not so designated, shall be and are hereby forfeited and surrendered and shall revert to this Commonwealth, shall have been approved by a majority of the members of The Water Supply Commission of Pennsylvania and filed in the office of the Secretary of the Commonwealth." Act June 7th, 1907, section 3, (P. L. 455).

See section 28.

136. RIGHT OF EMINENT DOMAIN OVER WATERS FORFEITED UPON SALE.

The above quoted section 3 of the Act of June 7th, 1907, further provides that "No such certificate shall be approved by the said Water Supply Commission of Pennsylvania, until the corporation so purchasing shall have filed in the office of The Water Supply Commission of Pennsylvania a written acceptance, under the seal of said corporation and authorized by a majority of the stockholders thereof, both of this act and of the act approved April thirteenth, one thousand nine hundred and five, entitled 'An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law,' agreeing to be subject to and bound by the provisions of both of said acts, with like effect as if said corporation had been formed subsequently to the passage of both of said acts, and shall have filed a certified copy of said acceptance in the office of the Secretary of the Commonwealth."

137. EFFECT OF SALE.

Where a water company sells and by proper deed conveys all of its franchises to another company, the company so selling ceases to exist: Com. v. Lumber City Water Co., 225 Pa. 317.

138. REORGANIZATION AFTER JUDICIAL SALE.

"That whenever material, rolling-stock or property, whether located wholly or partly within this State, and franchises, or all or any part of such material, rolling-stock, property and franchises, of any gas, water, coal, iron, steel, lumber, oil, or mining or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge, or plank road, or of any corporation created by or under any law of this State, or of this and any other State or States, shall be sold and conveyed, under and by virtue of any process or decree of any court of this State or of the United States, or under or by virtue of a power of sale contained in any mortgage or deed of trust, without any process or decree of a court in the premises, the person or persons for or on whose account such material, rolling-stock, property, and franchises of any gas, water, coal, iron, steel, lumber, oil, or mining, or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge, or plank road, or of any corporation created by or under any law of this State, or of this State and any other State or States, so sold and conveyed, may be purchased, shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, possession, claims, and demand, in law and equity, of, in and to such material rolling-stock, property, or franchise, so sold and conveyed of any gas, water, coal, iron, steel, lumber, oil, or mining, or manufacturing, transportation, or telegraph company, or any railroad, canal, turnpike, bridge or plank road, or of any corporation created by or under any law of this State, or of this State and any other State or States, with the appurtenances, and with all the rights, powers, immunities, privileges, and franchises of the corporations as whose the same may have been sold, and which may have been granted to or conferred thereupon by any act or acts of As-

sembly whatsoever, in force at the time of such sale and conveyance, and subject to all the restrictions imposed upon such corporation by any such act or acts, except so far as the same are modified hereby, or have been by any amendments or supplements thereto or modifications thereof; and with all the rights, powers, immunities, privileges, and franchises granted to or conferred by acts now existing upon corporations of a similar kind, and subject to all restrictions imposed by statute, except as subsequently modified, or modified hereby; and the person or persons purchasing, for or on whose account any such material, rolling-stock, property, and franchises of any gas, water, iron, steel, lumber, oil, or mining, or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge, or plank road, or of any corporations created by or under any law of this State, or of this State and other State or States, so sold and conveyed, may have been purchased, shall meet, within thirty days after the conveyance thereof shall be delivered,—public notice of the time and place of such meeting having been given, at least once a week for two weeks, in at least one newspaper published in the city or county in which such sale may have been held,—and organize said new corporation by electing a board of directors, consisting of not less than five nor more than fifteen (to continue in office until the first Monday succeeding such meeting, when, and annually thereafter on the said day, a like election for directors shall be held, the directors so elected to serve for one year and until their successors are elected, unless the directors shall be divided into not more than four classes, in which case the term of office of one class shall expire on each first Monday of May thereafter), and shall adopt a corporate name and common seal, determine the amount of the capital stock thereof, without being restricted to the amount theretofore issued by the corporation whose property and franchises had been sold. Not in excess, however, of the aggregate amount of the capital stock authorized to be issued by the corporation whose property and franchises had been sold, together with the amount of the bonded indebtedness of such corporation outstanding at the time of the sale, and of any receiver's certificate or other receiver's indebtedness necessary to be paid, and the amount that will represent all further moneys contributed to such new or reorganized corporation. The said stock thus issued by the said new corporation may consist wholly of common stock, or partly of common stock and partly of preferred stock; and the whole, or any part thereof, may be issued as fully paid stock, in payment or part payment for the property so purchased. Said new corporation shall have power and authority to make and issue certificates therefor, in shares of not more than one hundred dollars each; and may at any time thereafter create and issue preferred stock to such an amount and on such terms as such corporation may deem necessary; and, from time to time, may issue bonds to any amount, and may secure the same by one or more mortgages upon the real and personal property and corporate rights and franchises, or either, or any part or parts thereof: Provided, That no coal, iron, steel, lumber, or oil, or mining, manufacturing, transportation or telegraph company, shall have the benefit of this act, unless it shall have previously filed with the Secretary of State its acceptance of all

the provisions of the Constitution as provided by law:" Section 1 of the Act of April 8th, 1861, (P. L. 259), as finally amended by Act of June 20th, 1911, (P. L. 1092).

See section 95.

"That whenever any person or persons are, or shall be at the date of the passage of this act, the owner or owners, in good faith, for valuable consideration, of material, * * * * * or property, whether located wholly or partly within this State, and franchises, or all or any part of such material, * * * * * property, and franchises, which were formerly owned and exercised by any * * * * * water, * * * * company, or any * * * canal, * * * or any corporation, created by or under any law of this State or of this and any other State or States, and which shall have been sold and conveyed under and by virtue of any process or decree of any court of this State or of the United States, or under or by virtue of a power of sale contained in any mortgage or deed of trust without any process or decree of a court in the premises, whether such person or persons shall hold such material, * * * * * property, and franchises by direct sale and conveyance as aforesaid, or under, through and by a predecessor in title who held under such sale and conveyance, and whenever such person or persons is, or shall be at the date of the passage of this act, in good faith holding and exercising such material * * * * * property, and franchises, as aforesaid, the holding, ownership and exercise thereof by such person or persons shall not be deemed, held, or adjudged invalid, defective, or insufficient in law, by reason of the failure of such person or persons or their predecessor or predecessors in title to comply with the provisions of the act of Assembly, entitled 'An act concerning the sale of railroads, canals, turnpikes, bridges, and plank roads,' approved the eighth day of April, Anno Domini one thousand eight hundred sixty-one, and the supplements and amendments thereto, with respect to the reorganization of the corporation whose material, * * * * * property, and franchises have been sold as aforesaid, but the holding, ownership, and exercise thereof, by such person or persons, shall be as good, valid and effectual, in law and in fact, as if such person or persons or their predecessors in title had complied with the provisions of said act; and such person or persons shall be, and they are hereby constituted, a body politic and corporate, and shall be vested with all the right, title, interest, property, possession, claims, and demand, in law and equity, of, in, and to such material, * * * * * property, or franchises: Provided, Such person or persons shall not later than the first day of October one thousand nine hundred nineteen proceed to a full compliance with the requirements of the said act of assembly for the reorganization and perpetuation of such corporation or body politic:" Section 1, Act of May 23, 1919, (P. L. 240).

## 139. AMOUNT OF CAPITAL STOCK LIMITED ON REORGANIZATION.

"It shall be unlawful for any public service company—

"(b) In the case of any reorganization under the provisions of the act of Assembly approved the eighth day of April, Anno Domini one thousand eight hundred and sixty-one, entitled 'An act concerning the sale of railroads, canals, turnpikes, bridges, and plank roads,' or any supplement thereto or amendment thereof, to issue any stock,

trust certificates, bonds, notes, or other evidences of indebtedness or other securities, in excess of the amount paid or agreed to be paid to the Commonwealth or any political subdivision thereof, as the consideration for the grant of any franchises, rights, powers, or privileges, and the value of the property of such reorganized corporation (and any additional sum actually paid in cash, and any additional property or labor actually contributed): Provided, That any such public service company may apply to the commission to determine such consideration or value, aforesaid:" Article III, section 6, Act of July 26, 1913, (P. L. 1374).

See section 97.

## C. LEASE.

### 140. LEASE AUTHORIZED.

"It shall and may be lawful for any corporation, organized under the provisions of this act, either for the purpose of carrying on any manufacturing business, or for the supply of water, or for the manufacture or supplying of light * * * * * to enter into contracts for the use or lease of the corporate property, real, personal, or mixed, of such company, upon such terms as may be agreed upon with the company or companies owning the same, and to run, use and operate such property in accordance with such contract or lease:" Act April 29th, 1874, section 12, as amended by Act June 26th, 1895, (P. L. 369), as re-enacted by Act of March 24th, 1905, (P. L. 56).

Under this act a water company may lease its property and franchises to another water company organized under the same act: Moore v. Chartiers Valley Water Co., 216 Pa. 457.

A water company organized under the act of 1874 may lease the property and franchises of another water company, and thereby acquires the lessee company's charter powers. The lessee company exercises its powers by virtue of the authority granted to it by the State and as its agent and not as the agent of another corporation. Gring v. Sinking Spring Water Co., 20 D. R. 891.

### 141. PUBLIC SERVICE COMMISSION MUST APPROVE.

"Upon the approval of the (Public Service) Commission first had and obtained, as aforesaid, and upon compliance with existing laws, and not otherwise, it shall be lawful—

"(c) For any public service company to sell, assign, transfer, lease, consolidate, or merge its property, powers, franchises, or privileges, or any of them, to or with any other corporation or person:" Article III, section 3, Act of July 26, 1913, (P. L. 1374).

## D. OWNERSHIP OF STOCK.

### 142. OWNERSHIP OF STOCK OF WATER COMPANIES BY OTHER WATER COMPANIES AUTHORIZED.

"It shall, and may be, lawful for any corporation, organized under the provisions of this act, either for the purpose of carrying on any manufacturing business or for the supply of water, or for the manufacture or supplying of light, to subscribe for, take, purchase, hold or dispose of the bonds or stock in any company of the same character incorporated under the provisions of this act or its sup-

plements, or guarantee the payment of said bonds and the interest thereon, or either principal or interest:" Act April 29th, 1874, section 12, as amended by Act June 26th, 1895, (P. L. 369), as amended by Act of March 24th, 1905, (P. L. 46).

"That hereafter any corporation, organized for profit, created by general or special laws, may purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, the shares of the capital stock of, or any bonds, securities, or evidences of indebtedness created by, any other corporation or corporations of this or any other State, and while the owner of said stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon:" Act July 2nd, 1901, (P. L. 603).

143. OTHER CORPORATIONS MAY OWN STOCK OF COMPANIES FOR THE SUPPLY, STORAGE AND TRANSPORTATION OF WATER AND WATER POWER FOR COMMERCIAL AND MANUFACTURING PURPOSES.

The Act of July 2nd, 1895, (P. L. 432), conferring further powers upon corporations "for the supply, storage and transportation of water and water power for commercial and manufacturing purposes," also provides that "the stock in any company incorporated for the purpose named in this act may be owned and held by corporations of this State, or of other states of the United States."

144. RAILROAD COMPANIES MAY OWN STOCK OF WATER COMPANIES.

"In order to enable railroad companies of this Commonwealth to secure an adequate supply of water for their necessary corporate purposes, they are hereby authorized, from time to time, to acquire, own, and hold, pledge, sell or otherwise dispose of, the stock, bonds and other securities, or either, and to guarantee the stock, bonds and other securities, or either, of water companies:" Act April 22nd, 1905, (P. L. 264).

145. PUBLIC SERVICE COMMISSION MUST APPROVE WHEN CONTROLLING INTEREST IS ACQUIRED BY ONE PUBLIC SERVICE COMPANY IN ANOTHER PUBLIC SERVICE COMPANY.

"It shall be unlawful for any public service company—

"(c) To purchase, acquire, take or hold, either in absolute ownership or in pledge, or as collateral security, directly or indirectly, any controlling right, title, or interest, legal or equitable, in the capital stock, bonds, trust certificates, or other evidences of indebtedness or other securities, issued by, or other controlling right, title, or interest whatsoever in, any other public service company, conducting business within this Commonwealth, without the consent and approval of the commission; but the purchase, taking and holding, aforesaid, of any right, title, or interest in any such capital stock, bonds, trust certificates, or other evidences of indebtedness or other securities, or of any other right, title, or interest in any other public service company, which shall amount to less than the aforesaid controlling right, title, or interest, of any nature or kind, shall be lawful without the approval of the commission, so far as the same may be lawful under

existing laws: Provided, however, That nothing in this act shall be construed to affect the holding of stock, bonds, trust certificates, or other evidences of indebtedness or other securities, heretofore legally acquired and held; or in any way diminish, lessen, or impair the rights of any public service company, in virtue of the holding by said company of such stocks, trust certificates, bonds, notes, or other evidences of indebtedness or other securities, heretofore acquired and held; or to prevent the future acquisition of such stocks, trust certificates, bonds, notes, or other evidences of indebtedness or other securities of a public service company, where the major interest therein has been acquired and held by a public service company prior to the date when this act shall become effective; or to prevent the future acquisition, holding, or cancellation by a public service company of trust certificates, bonds, notes, or other evidences of indebtedness or other securities secured by stock, theretofore legally acquired and owned by a public service company and pledged as security therefor:" Article III, section 6, Act of July 26, 1913, (P. L. 1374).

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## ARTICLE XIV.

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### DISSOLUTION AND FORFEITURE.

### 146. VOLUNTARY DISSOLUTION BY PETITION OF COMPANY.

"It shall be lawful for any court of Common Pleas of the proper county to hear the petition of any corporation, under the seal thereof, by, and with, the consent of a majority of a meeting of the corporators, duly convened, praying for permission to surrender any power contained in its charter, or for the dissolution of such corporation; and if such court shall be satisfied that the prayer of such petition may be granted without prejudice to the public welfare, or the interests of the corporators, the court may enter a decree in accordance wih the prayer of the petition, whereupon such power shall cease, or such corporation be dissolved: Provided, That the surrender of any such power shall not in any wise remove any limitation or restriction in such charter; and that the accounts of the managers, directors or trustees of any dissolved company shall be settled in such court and be approved thereby; and dividends of the effects shall be made among any corporators entitled thereto, as in the case of the accounts of assignees and trustees: Provided, further, That no property devoted to religious, literary or charitable uses shall be diverted from the objects for which they were given or granted: Provided, That the decree of said court shall not go into effect until a certified copy thereof be filed and recorded in the office of the Secretary of the Commonwealth:" Act April 9th, 1856, (P. L. 293).

The equity power to dissolve corporations involves a further proceeding to the extent of a distribution of the assets of such corporations among those legally entitled thereto. Titusville Oil Exchange's Dissolution, 10 Pa. Super. Ct. 496.

"The 'proper county' intended by said act, the Act of April 9th, 1856, approved as aforesaid, may be, at the option of any corporation praying for permission to dissolve, either the county in which the principal operations of the corporations are conducted, or that county in which its principal office or place of business is located; Provided, That notice of such application shall be given, by publication in two newspapers in the county in which the principal operations are conducted, and that in which the principal office is located:" Act April 4th, 1872, (P. L. 40).

"No corporation, company, joint stock association, association or limited partnership, made taxable by this act, shall hereafter be dissolved by the decree of any court of Common Pleas, nor shall any judicial sale be valid or a distribution of the proceeds be made until all taxes due the Commonwealth have been fully paid into the State Treasury and the certificate of the Auditor General, State Treasurer and Attorney General to this effect filed in the proper court with the proceedings for dissolution or sale:" Act June 1, 1889, section 32, (P. L. 437).

## 147. OTHER FORMS OF DISSOLUTION.

1. The consolidation and merger of two or more corporations usually works a dissolution of the corporations so merging, and the creation of a new one having the rights and franchises of the constituent companies: Pennsylvania Railroad Co. v. Ohio River Junction Railroad Co., 204 Pa. 356.

2. The sale of all the property and franchises of a corporation to another works a dissolution of the corporation so selling: Commonwealth v. Lumber City Water Co., 225 Pa. 317.

3. The sale of the property and franchises of a corporation at judicial sale works a dissolution of the corporation, the purchasers thereof having the right to reorganize and form a new corporation, whose existence dates from the completion of such reorganization: Reifler v. Honesdale & Delaware Plank Road Co., 1 Pa. C. C. 64.

4. The expiration of the time for which the company was incorporated works a dissolution.

## 148. DISSOLUTION BY PROCLAMATION OF THE GOVERNOR.

"If the officers of any limited partnership association, joint stock association, or corporation, or any of them, shall intentionally neglect or refuse to furnish the Auditor General with the report and appraisement, as required by law, for three successive years, he or they shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of five hundred dollars, and undergo an imprisonment not exceeding one year, or both or either, at the discretion of the court: And provided further, That the Auditor General shall report the fact to the Governor, who, if he shall be satisfied that such failure was intentional, shall thereupon by proclamation declare the charter of said corporation or company forfeited and its chartered privileges at an end; whereupon the same

shall cease, end, and be determined, saving, however, the rights of the creditors and stockholders in and to any property, assets, claims, or demands of the corporation or company:" Section 22, Act of June 1, 1889, (P. L. 420), as amended by Act of June 2, 1915, (P. L. 728).

149. FORFEITURE FOR MIS-USER OR NON-USER.

The charter of a corporation may be forfeited by a proceeding of quo warranto by the Attorney General on behalf of the State for mis-user or non-user of franchises in regard to matters which are of the essence of the contract between the corporation and the State where the acts or omissions complained of, have been repeated and wilfull: Commonwealth v. Commercial Bank, 26 Pa. 389; Clineclamouche Lumber Co. v. Commonwealth, 100 Pa. 438.

"Writs of quo warranto in the form and manner hereinafter provided may also be issued by the several courts of common pleas (concurrently with the Supreme Court) in the following cases, to wit:

"V. In case any corporation, as aforesaid, shall forfeit by misuser or non-user its corporate rights, privileges or franchises or shall do, suffer or omit to do, any act, matter or thing whereby a forfeiture thereof shall by law be created, or shall exercise any power, privilege or franchise not granted or appertaining to such corporation.

"In any such case the writ aforesaid may be issued upon the suggestion of the Attorney General, or his deputy in the respective county, or of any person or persons, desiring to prosecute the same:" Act June 14th, 1836, section 2, (P. L. 621).

Notwithstanding the provision of the Act of June 14th, 1836, that a writ of quo warranto may be issued upon the suggestion of any person or persons desiring to prosecute the same a writ will not lie at the relation of a private citizen to forfeit the charter of a corporation. While the act authorizes the writ to issue on the relation of any one desiring to prosecute the same, the courts will allow no one to desire at law that in which he has no interest: Commonwealth v. Allegheny Bridge Co., 20 Pa. 185; Murphy v. Farmers Bank, 20 Pa. 415; Commonwealth v. Philadelphia, Germantown and Norristown Railway Co., 20 Pa. 518; Commonwealth v. Farmers Bank, 2 Grant 392; Commonwealth v. Dillon, 81 Pa. 41.

"Whenever the Attorney General shall have reason to believe that any association as aforesaid has acted as a corporation or exercised any of the franchises or privileges thereof without lawful authority or if any corporation has forfeited its corporate rights, privileges, or franchises as aforesaid or exercised any power, privilege or franchise not granted or appertaining to such corporation, it shall be his duty to file or cause to be filed a suggestion as aforesaid, and to proceed thereon for the determination of the matter:" Act June 14th, 1836, section 3, (P. L. 621).

"Whereas, Water and water-power companies incorporated under the laws of the Commonwealth of Pennsylvania are required to begin the construction of their works within two years after the date of their incorporation, and to complete the same within five years thereafter;

"Whereas, Water and water-power companies which have not begun their works or completed the same within the time set by law may apply to the court of common pleas for an extension of said time;

"Whereas, The general corporation act of one thousand eight hundred and seventy-four and its supplements are indefinite as to the method by which water and water-power companies which have failed to comply with the requirement of beginning or completing works within the time set by law, shall become defunct;

"Whereas, It is decidedly to the best interest of the water-supply of the Commonwealth that the charters of such water and water power companies be annulled:—

"Subsequent to the passage of this act any water company or water-power company, heretofore or hereafter incorporated under the laws of this Commonwealth, which shall not have begun the construction of its works within two years after the date of its incorporation, or which shall not have completed the same or placed the same in operation within five years thereafter, may, at any time previous to the expiration of said two years, or five years thereafter, make application to the Water Supply Commission of Pennsylvania for an extension of such time, as herein provided. Such application shall be made upon a petition, under the common seal of such corporation and verified by its president or other presiding officer, setting forth the grounds of the application, and that the same is made pursuant to a resolution of the board of directors of said company, at a meeting called for the purpose,—a duly certified copy of which shall be annexed to said petition. Thereupon it shall be the duty of said commission to hold a hearing upon said petition, at such date as it may decide, and, after due hearing and examination, said commission may approve said petition, subject to such limitations and restrictions as it may see fit, and file in the office of the Secretary of the Commonwealth a duly certified copy of an order setting forth its approval of said application for extension. In the event of the refusal to approve by the Water Supply Commission, appeal may be taken by such company, within ten days thereafter, to the court of common pleas of the county in which said corporation shall have its principal office; whereupon said court shall review the papers in the case, and testimony at the hearing before the Water Supply Commission; and, in the event of said court finding that such company had proceeded with due diligence and good faith, it may order the reversal of the order of the commission, setting forth the limit of such extension of the time granted, and file a copy of such order with the Secretary of the Commonwealth.

"In the event of the refusal of the Water Supply Commission to approve such petition for extension of time, and if an appeal shall not be taken within ten days thereafter, said commission shall, on the expiration of the said period of two years or five years, issue a decree declaring such company defunct and its charter void, and it shall be stricken from the books of the Secretary of the Commonwealth and the Auditor General:" Section 1, Act of June 15th, 1911, (P. L. 990).

"The Water Supply Commission of Pennsylvania may on its own initiative, or in response to petition, inquire into the standing of any water or water-power charter; and in such event it may hold a hearing, after due notice to the president or secretary of such company, addressed to the principal office of the company as indicated by its latest report filed with the Auditor General or Secretary of the Commonwealth, to determine whether such company has commenced

work on its plant or completed the same within the time set by law. If, afer due hearing and consideration, said commission shall be of the opinion that such company has not proceeded with due diligence and with bona fide intent to fulfill the requirements of law, it may certify the facts in the case to the Attorney General, requesting him to institute quo warranto proceedings against said company for the annulment and revocation of its charter:" Section 2, Act of June 15th, 1911, (P. L. 990).

150. JURISDICTION IN QUO WARRANTO.

"The court of common pleas of Dauphin county is hereby clothed with jurisdiction, throughout the State, for the purpose of hearing and determining all suits, claims and demands whatever, at law and in equity, in which the Commonwealth may be the party plaintiff, for accounts, unpaid balances, unpaid liens, taxes, penalties, and all other causes of action, real, personal and mixed:" Section 1, Act of April 7th, 1870, (P. L. 57).

The court of common pleas of Dauphin county has jurisdiction in all suits and proceedings in which the Commonwealth is the real plaintiff.

The words "all other causes of action, real, personal and mixed." confer jurisdiction on the court of common pleas of Dauphin county to issue a writ of quo warranto, in which the Commonwealth is the real plaintiff, against a corporation not having its place of business, and not excercising, or claiming to have or exercise, any powers, privileges, or franchises within said county. Com. v. Penna. Slatington and New England R. R. Co., 14 W. N. C., 60.

"The courts of common pleas of the several counties of this Commonwealth are hereby clothed with jurisdiction in all cases in which the Commonwealth is a party: Provided that nothing in this act shall be construed to apply to tax cases to which the Commonwealth is a party:" Section 1, Act of July 10, 1901, (P. L. 637).

151. FORFEITURE FOR FAILURE TO COMMENCE OR COMPLETE WORKS.

"If any company incorporated under this act, or any of its supplements, shall not proceed in good faith to carry on its work and construct or acquire its necessary buildings, structures, property or improvements within the space of two years from the date of its letters patent, and shall not, within the space of five years thereafter complete the same, the rights and privileges thereby granted to said corporation shall revert to the Commonwealth: Provided, however, That it shall be lawful for any such corporation who shall have proceeded in good faith as aforesaid, at any time before the expiration of the said period of five years, or of any extension thereof, to apply to the court of common pleas in and for the county in which said corporation shall have its principal office for an extension of such time as herein provided. Such application shall be made upon a petition, under the common seal of such corporation and verified by its president or other presiding officer, setting out the grounds of the application, and that the same is made pursuant to a resolution of the board of directors of said company at a meeting called for that purpose, a duly certified copy of which resolution shall be

annexed to said petition. Thereupon it shall be the duty of such court to set down said petition for hearing before it upon some day to be fixed by said court, and to direct that notice of such petition shall be given by publication or otherwise, as the court shall direct. Upon the day so fixed, or upon such subsequent day or days as the matter may be adjourned to, said court shall proceed to a hearing of said petition, and it being made to appear to said court that the order of notice herein provided for has been complied with, said court may, by order, adjudge and direct that the time of such corporation to complete its necessary buildings, structures, property or improvements shall be extended for a period not exceeding five years beyond the time fixed by law for the completion thereof, and thereupon, upon filing a duly certified copy of such order in the office of the Secretary of the Commonwealth, the time of such corporation to complete its necessary buildings, structures, property or improvements shall be extended as provided in such order: Provided, further, That when said buildings, structures, property or improvements are wholly within one county, said application shall be made to the court of common pleas in, and, for said county:" Act of April 17th, 1876, section 11, (P. L. 37), as amended by Act May 16th, 1889, section 2, (P. L. 242).

"Any corporation of the second class, created under the provisions of the act to which this is a supplement, or any of its supplements, that shall not, within two years, from the date of its letters patent, proceed in good faith to organize and to do the things contemplated by its charter, and have paid up at least, one-fourth of its capital stock, shall be held and deemed to have forfeited its charter, and the Attorney General shall, on the application of any citizen, take the proper legal steps to forfeit and vacate its said charter, but any corporation now in existence shall have two years from the date of this act to do, and perform, the things by this section required:" Act June 13th, 1883, section 5, (P. L. 123).

It has been held by the Supreme Court, that under the provisions of section 11 of the Act of April 17th, 1876, which are identical with the provisions of the Act of May 16th, 1889, that the general rule of law, that a corporation is not dissolved for mis-user or non-user of its franchises without a proceeding on the part of the State for that purpose, did not apply, but that if the company failed to do anything toward the building of its works within two years or to complete the same within five years thereafter, its franchise reverted to the State without a judgment of court: Commonwealth v. Lykens Water Co., 110 Pa. 391.

Notwithstanding this decision, which was given after the passage of the Act of June 13th, 1883, it has been held by the court of common pleas of Dauphin county, and also by the Attorney General's Department, that before a forfeiture of a charter of a corporation occurs there must be action by the Attorney General, as provided by the said Act of June 13th, 1883: Lebanon Water Co.'s Petition, 4 Dauph. 228; Unorganized Trust Cos., 10 Dauph., 74; 33 Pa. C. C. 353.

In a later common pleas case it has been decided that even though the court could not, in a collateral proceeding determine a forfeiture for failure to commence or complete the work within the time prescribed, it could determine that a corporation had no right to exer-

cise a particular franchise where it appeared that the franchise had been lost by reason of the company's failure to commence or complete work: Chester County Gas Co. v. Merion & Radnor Gas and Electric Co., 16 Dist. 214.

The five years within which it is provided by the Act of May 16th, 1889, a corporation must complete its works dates from the end of the two years within which it is allowed to commence. Degan v. Meadow Brook Water Co., 3 Lack. Jur. 233; in re Petition of Meadow Brook Water Co., 1 Lack, L. N. 143.

### 152. WHAT CONSTITUTES COMMENCEMENT OF WORK.

It has never been decided just what is a commencement of work necessary to prevent a forfeiture of a charter with reference to a water company or any company formed under the Act of April 29th, 1874. It has, however, been decided with a reference to a street railway company under a statutory provision similar to that contained in the Act of April 17th, 1876, that a distribution and location of ties, rails and other materials along the bed of a highway upon which the street railway is to be constructed, followed by the digging up of the highway to a depth of eleven inches to receive the ties and rails is a beginning of the work of construction: Upper Providence v. Trappe & Limerick Electric Street Railway Co., 20 Mont. 167.

It has also been held with reference to a gas and electric company formed by the consolidation of a number of companies incorporated under the Act of April 29th, 1874, that the commencing of work in a single district covered by the charter of any one of the constituent companies, even though before the consolidation, is a commencing of work within the whole district covered by the consolidated company, if it is the intention to supply gas and electricity in the entire district: Chester County Gas Co. v. Merion & Radnor Gas & Electric Co., 16 Dist. 214.

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## ARTICLE XV.

### OFFENCES AGAINST WATER COMPANIES.

### 153. TAKING OF WATER WITHOUT AUTHORITY.

"If any person or persons shall open a communication into the water or gas main or other pipe of said company, without authority from the inspector or other authorized agent of said company, or shall let on the water or gas, after either shall have been stopped by order of said inspector or authorized agent of said company for repairs or any other cause or purpose, or shall put up any hydrants, pipes or burners, in addition to those originally put up and inspected, and introduce into them, water and gas, as the case may be without authority as aforesaid, he, she or they shall be subject to a penalty of not less than ten, nor more than one hundred dollars, recoverable

before any alderman or justice of the peace of the proper county, as debts of like amount are by law recoverable, one-half to be paid to the informer, and one-half to the company:" Clause 5, section 34, Act of April 29th, 1874, (P. L. 73).

The imposing of a penalty for turning on or taking the water of a water company without authority is a legitimate exercise of the police power of the Commonwealth, and is intended to protect the interests of the public by investing those who have undertaken to discharge a duty to the public with the absolute control of the instrumentalities for discharging that duty, and the officers or agents of a borough have no more authority to turn on and take the water of a water company than a private individual, and should they do so, even under cover of a resolution of the borough council, they are individually liable to the penalty: Tyrone Gas & Water Co., v. Burley 19 Superior Court, 348.

## 154. INJURING WORKS OF A WATER COMPANY.

"If any person shall wilfully or maliciously do, or cause to be done, any act or acts whatever, whereby any building construction, reservoir or works of said company, or any water or gas pipe, gas post, burner or reflector, or any matter or thing appertaining to the same shall be stopped or obstructed, injured, contaminated or destroyed, the person or persons so offending shall be considered guilty of a misdemeanor, and may therefor be indicted in the court of quarter sessions of the proper county, and on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court: Provided, That such criminal prosecution shall not in any way impair the right of said company to a full compensation in damages by civil suit:" Clause 6, section 34, Act of April 29th, 1874, (P. L. 73).

"If any person shall wilfully and maliciously injure, or destroy, or attempt to injure or destroy, any well sunk for the production of * * * * * water, or any reservoir, standpipe, or tank intended or used for the storage * * * * * of water, or any pumping-station, valve, or pipe-line intended or used for the transportation of * * * * water, or any power-house, substation, cable or wire intended or used for the manufacture or transportation of electric current, or any machinery connected with such wells, tanks, lines of pipe, reservoirs, standpipes, pumping-stations, compressing stations, power-houses, substations, cables, or wires, he shall be guilty of a misdemeanor; and upon being thereof convicted shall be sentenced to pay a fine not exceeding one thousand dollars, and undergo imprisonment not exceeding three years, or both or either, at the discretion of the court." Section 1, Act of June 23rd, 1885, (P. L. 145) as amended by Act of July 6th, 1917, (P. L. 748).

## 155. TRESPASS AND POLLUTION OF WATERS.

"That any person who shall wilfully enter upon the enclosed land of any company incorporated under the laws of this Commowealth for the purpose of supplying water to the public for drinking purposes, on which land is erected a dam, reservoir, pond or other artificial means for storing water, and pollute or attempt to pollute the

water on such land, shall be deemed, and the same is hereby declared to be a misdemeanor, and may be prosecuted and convicted as such under the laws of this Commonwealth, and conviction thereof in the court of quarter sessions of the proper county, shall be fined not exceeding fifty dollars and imprisonment not exceeding sixty days:" Act June 24th, 1895, section 1, (P. L. 231).

"That any duly constituted watchman of any such water company, or any constable or policeman, is hereby authorized and empowered. upon his own view of any such trespass, to make arrests and bring before any alderman or magistrate of the proper county, offenders found violating the provisions of this act:" Act June 24th, 1895, section 2, (P. L. 231).



# APPENDIX



# APPENDIX.

This appendix contains articles dealing with the creation, organization, power and duties, and administration of the Water Supply Commission, not treated under the law relating to water companies.


ARTICLE I. CREATION, APPOINTMENT OF MEMBERS, OATH OF OFFICE, VACANCIES AND SALARIES.

ARTICLE II. ORGANIZATION, POWERS AND DUTIES.

ARTICLE III. PYMATUNING SWAMP.

ARTICLE IV. FRENCH CREEK.

ARTICLE V. RULES GOVERNING THE PRACTICE BEFORE THE COMMISSION.

ARTICLE VI. RULES AND INSTRUCTIONS CONCERNING APPLICATIONS AND PLANS FOR THE REPAIR, ALTERATION AND CONSTRUCTION OF DAMS.

ARTICLE VII. RULES AND INSTRUCTIONS CONCERNING APPLICATIONS AND PLANS FOR THE CONSTRUCTION, ALTERATION OR PERMANENT REPAIR OF BRIDGES, WALLS, WHARVES, FILLS OR OTHER WATER OBSTRUCTIONS, EXCLUSIVE OF DAMS.

ARTICLE VIII. FORMS.


## WATER SUPPLY COMMISSION OF PENNSYLVANIA.

## ARTICLE I.

### CREATION; APPOINTMENT OF MEMBERS; OATH OF OFFICE; VACANCIES AND SALARIES.

#### (a) CREATION OF COMMISSION, APPOINTMENT OF MEMBERS.

"That there is hereby created the Water Supply Commission of Pennsylvania to consist of five members, three of whom shall, within thirty days after the passage of this act, be appointed by the Governor, by and with the consent of the Senate, to serve for four years from the time of their appointment, and the two remaining members of the commission shall be the Commissioner of Forestry and the Commissioner of Health, to be called and known as the Water Supply Commission of Pennsylvania." Section 1, Act of May 4, 1905, (P. L. 385).

(b) OATH OF OFFICE AND FILLING OF VACANCIES.

"The members of the Commission shall, before entering upon the discharge of their duties, take and subscribe to the oath of office provided by the Constitution, and file the same in the office of the Secretary of the Commonwealth. All vacancies occurring in the Commission shall be filled by appointment of the Governor for four years." Section 2, Act of May 4th, 1905, (P. L. 385).

(c) SALARIES OF MEMBERS.

"Each member of the Commission shall receive a salary of three thousand dollars per annum which shall be paid quarterly by a warrant drawn by the Auditor General, upon the State Treasurer, out of moneys not otherwise appropriated, except the Commissioner of Forestry and the Commissioner of Health, who shall serve without salary, but shall be allowed necessary expenses." Section 6, Act of May 4th, 1905, (P. L. 385).

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## ARTICLE II.

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### ORGANIZATION, POWERS AND DUTIES.

(a) ORGANIZATION AND APPOINTMENTS.

"Immediately after the appointment and qualification of the members of the Commission, they shall proceed to organize by electing a chairman and secretary * * * * *" Section 3, Act of May 4, 1905, (P. L. 385).

"It shall be the further duty of the Commissioners, that they are hereby authorized to appoint a competent engineer, at a salary of two thousand five hundred dollars per annum, and a competent clerk, who shall also be a stenographer, at a salary of one thousand two hundred dollars per annum, to assist them in their labors." Section 4, Act of May 4th, 1905, (P. L. 385).

(b) POWERS AND DUTIES.

1. AS TO INVESTIGATIONS—INVENTORIES—REPORTS—RECOMMENDATIONS.

" * * * * * * It shall be the duty of the Commission to procure, as speedily as may be, all the data and facts necessary to advise them thoroughly of the situation of the water supply of the State, and adopt such ways and means of utilizing, conserving, purifying and distributing such water supplies in such a way that the various communities of the State shall be fairly and equitably dealt with in such distribution: Provided, however, That the local distribution of water within the limits of an incorporated village, town or city, is not to fall within the jurisdiction of this commission." Section 3, Act of May 4th, 1905, (P. L. 385).

"It shall be the further duty of the said Commission to collect such information relative to the existing conditions of the water supply of the State, and to make an annual report to the Governor and the Legislature, based upon such investigation, recommending such future legislation as in its opinion is necessary for the conservation, development, purification, equitable distribution and the supply of the waters of the State, and in particular to such communities as are now greatly in need of extended facilities for this purpose." Section 7, Act of May 4th, 1905, (P. L. 385).

"That the term 'water resources' as used in this act, includes all rivers, streams, and underground waters, and all bodies of surface water, either in whole or in part, within this State." Section 1, Act of July 25th, 1913, (P. L. 1233).

"It shall be the duty of the Water Supply Commission of Pennsylvania to make a complete inventory of all the water resources of the Commonwealth; and collect all pertinent data, facts, and information in connection therewith; and to classify, tabulate, record, and preserve the same; and, upon the basis thereof, to determine the points at which reservoirs may be constructed for the purpose of minimizing floods, of storing and conserving water for power, and other utilization and distribution of water and water-power, of increasing the low water flow of rivers and streams for the purpose of navigation; and generally, to devise all possible ways and means to conserve and develop the water supply and water resources of the Commonwealth, for the use of the people thereof. To the end and object aforesaid, the said Commission shall study, consider, and determine upon a public policy with regard to the marketing and equitable distribution of the water to be derived from the water resources of the Commonwealth; to the restoration, development, and improvement of transportation by water; to the supply of water for domestic and industrial use, and to the conservation of water resources by the aid of forestation. The Commission shall present a report, in writing, to the next session of the General Assembly setting forth the result of such inventory, together with such recommendations and suggestions for legislation, upon the basis thereof, as to it may seem expedient and advisable. The said Commission is hereby authorized and directed to publish, and have printed for general distribution, five thousand copies of such report." Section 2, Act of July 25th, 1913, (P. L. 1233).

"Whereas the amelioration of flood conditions on the rivers of this Commonwealth is a matter of vital importance because of the severe damage suffered annually by reason of floods on such rivers, and

"Whereas the Government of the United States is desirous of co-operating with the Commonwealth of Pennsylvania in making investigations, examinations and surveys on rivers of this Commonwealth and on tributaries of such rivers, whether the same be wholly within or partly within and partly without or wholly without this Commonwealth and in preparing plans and estimates of costs for the purpose of devising and carrying into effect plans for the control of the flood waters of rivers being either in whole or in part within this Commonwealth, and

"Whereas it is to the best interests and welfare of this Commonwealth to co-operate with the Government of the United States for this purpose, therefore

"Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the sum of * * * * * is hereby made available to the Water Supply Commission of Pennsylvania or the Department of Conservation for the purpose of co-operating with the Government of the United States in making examinations, investigations and surveys on rivers of this Commonwealth and on tributaries of such rivers whether the same be wholly within or partly within and partly without or wholly without this Commonwealth and in preparing plans and estimates of cost with a view to devising and carrying into effect plans for controlling the flood waters of rivers which are either in whole or in part within this Commonwealth. For the purpose of such co-operation the Water Supply Commission of Pennsylvania or the Department of Conservation is hereby authorized on behalf of the Commonwealth of Pennsylvania to enter into such contracts and agreements with the Secretary of War or other proper officer, bureau, department, or agency of the Government of the United States duly authorized thereto as to the said Water Supply Commission of Pennsylvania or the Department of Conservation may seem proper." Act of July 18th, 1919—(Appropriation act No. 466 A).

2. AS TO EMPLOYEES AND SUPPLIES.

"The Water Supply Commission of Pennsylvania shall employ such persons, expert or otherwise, as may be needed for the purpose of making the said inventory and report, as aforesaid, and for the purpose of carrying on any and all of its work heretofore authorized, or that may be hereafter authorized, and at such compensation as may be fixed by the said Commission." Section 3, Act of July 25th, 1913. (P. L. 1233).

"The Water Supply Commission of Pennsylvania is hereby authorized and empowered to purchase such supplies and material, of any and every kind, as may be incidental to or necessary in the prosecution of its work, if, in its judgment, it is necessary in order to expedite and more efficiently carry on its work." Section 3, Act of July 25th, 1913, (P. L. 1233).

3. AS TO EMINENT DOMAIN.

"In the performance of the work hereby authorized, the members of the Water Supply Commission, and any agent or employee thereof, are authorized to enter and re-enter upon any land or premises, and may make any survey or measurement, or collect any data deemed necessary. Any person who shall prevent, or attempt to prevent, any such entry or re-entry, or any such work aforesaid, or who shall destroy, or deface or disturb any mark, stake, device, or apparatus used, or intended to be used, in carrying on said work, shall, upon conviction thereof, in a summary proceeding before any alderman, magistrate or justice of the peace of the county, be sentenced to pay a fine of not more than twenty-five dollars, with costs of prosecution, or, in default thereof, shall be sentenced to undergo an imprisonment in the jail of the county for a period not exceeding ten days." Section 5, act of July 25th, 1913, (P. L. 1233).

"In the exercise of the powers, or in the performance of the duties now or hereafter conferred or imposed by law on the said commission, the said commission, or any of the members thereof, its engineers, employees, or any other agent or person appointed by it, shall have the right to enter and re-enter upon any land or premises, and have free access to the works, structures, buildings or grounds of any person or persons, partnership, association, municipality, township or corporation, within this Commonwealth, and to make any survey or measurement and collect any data of information which the Commission may deem necessary.

Any person who shall prevent or obstruct, or attempt to prevent or obstruct, the exercise of the right of entry, access or examination aforesaid, shall be guilty of a violation of the provisions of this act, and, upon conviction thereof, in a summary proceeding before any magistrate or justice of the peace of the proper county shall be sentenced to pay a fine of not less than fifty dollars, nor more than one hundred dollars, or to undergo an imprisonment in the jail of such county for a period not exceeding thirty days." Section 3 of act of July 7th, 1913, (P. L. 688).

4. AS TO WATER GAUGES.

"That the Water Supply Commission of Pennsylvania is hereby authorized to establish and to maintain such gauging stations on the principal rivers and tributaries thereof as, in the judgment of the commission, may be necessary for the determination of the daily height of water in such streams and tributaries thereof, as well as the amount of water flowing therein." Section 1, act of May 23rd, 1913, (P. L. 347).

"The Commission shall, during freshet and flood conditions, issue bulletins, to be telegraphed or telephoned to such municipalities in the Commonwealth where flood damage is likely to be caused, forecasting the probable maximum gauge heights expected to be reached, and the probable time of the arrival of such gauge heights." Section 2. Act of May 23rd, 1913, (P. L. 347).

5. AS TO THE ACQUIREMENT BY THE UNITED STATES OF NATIONAL FOREST RESERVES TO PROTECT WATERSHEDS OF NAVIGABLE STREAMS.

"That the United States of America is hereby empowered to acquire by purchase, or by making adequate compensation under condemnation proceedings, such lands in Pennsylvania as in the opinion of the Federal Government may be needed for the establishment of National Forest Reserves in this State, in accordance with an act of Congress, entitled, 'An act to enable any State to co-operate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers,' approved the first day of March, one thousand nine hundred and eleven: Provided, That the approval of the State Forestry Reservation Commission and the Water Supply Commission shall be first had and obtained:

Provided further, That if at any time in the future, after the establishment by the Federal Government of such National Forest Re-

serves in the Commonwealth of Pennsylvania, the Commonwealth shall desire to resume complete ownership and control over said lands, it may do so by appropriate legislative action, providing therein for the repayment to the United States of America of all moneys which may have been spent in acquiring lands the ownership of which is to be resumed, and interest thereon at the rate of two per centum per annum: And provided further, That the Commonwealth of Pennsylvania shall retain a concurrent jurisdiction with the United States in and over such lands, so far that civil process, in all cases, and such criminal process as may issue under the authority of the Commonwealth of Pennsylvania against any persons charged with the commission of any crime, without or within said jurisdiction, may be executed thereon in like manner as if this act had not been passed." Section 1, Act of May 11, 1911, (P. L. 271).

6. AS TO CONSENT TO BUILD TUNNELS UNDER NAVIGABLE STREAMS TO COAL LANDS.

"From and after the passage of this act, whenever the power or manufacturing plant of any company, heretofore or hereafter incorporated under the laws of the Commonwealth of Pennsylvania, is situated upon or near the bank of any navigable stream within this Commonwealth, and such company has the right, either as the owner in fee or by lease or other arrangements, to mine coal from or under lands adjoining or adjacent to the opposite bank of said navigable stream, or is the owner of a majority of the capital stock of any company that has the right, either as owner in fee or by lease or other arrangement, to mine coal from or under lands adjoining or adjacent to such opposite bank of said navigable stream such company shall have the right and lawful authority to construct, operate, and maintain tunnels under said navigable stream, so as to connect said coal lands, and any mine operated in connection with said coal lands, with said power plant of said company: Provided, however, Before any company begins the construction of any tunnel, it shall make application to, and secure the approval of, the Water Supply Commission of the Commonwealth of Pennsylvania or such other authority as shall, at the time of such application have jurisdiction over navigable streams under the laws of the Commonwealth of Pennsylvania the same as now vested in said Water Supply Commission: Provided, however, That said corporation or corporations, constructing said tunnel or tunnels, shall pay to the Commonwealth of Pennsylvania the fair market value for all coal mined in constructing said tunnel or tunnels." Act of July 8th, 1919, (P. L. 759).

7. AS TO HEARINGS AND PROCEDURE.

"That the Water Supply Commission of Pennsylvania is hereby authorized to prepare and publish rules and regulations, defining the procedure to be followed in all matters pertaining to or coming within its powers or authority. All hearings shall be public, and the Commission may at its discretion require that notice of any application presented to it, shall be published by the applicants, in at least one newspaper of general circulation in the proper county, two weeks prior to the hearing. Said notice shall include the purpose of the application, names of the applicants, location of the proposed

work, and the date of the hearing. Sufficient proof of the publication thereof, shall be filed with the Commission prior to the hearing. The Commission is hereby empowered to subpoena witnesses to appear before it at any time, and to require under subpoena the production of books, papers, and records on any matter coming within its powers or authority. Witnesses may be required to testify under oath or affirmation, which may be administered by any member of the Commission; and any person wilfully swearing falsely in any proceeding before the Commission shall be guilty of perjury," Section 1, Act of July 7th, 1913, (P. L. 688).

"Any person who shall appear at any hearing or investigation held by the Commission, who shall refuse to be sworn, or, being sworn, shall refuse to give testimony or produce any documentary evidence in his possession or custody at such hearing or investigation, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars, or undergo an imprisonment in the county jail, not exceeding one year, or both at the discretion of the court." Section 2, Act of July 7th, 1913, (P. L. 688).

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## ARTICLE III.

### PYMATUNING SWAMP.

"That the Water Supply Commission of Pennsylvania is hereby directed to survey the Pymatuning Swamp in Crawford County, Pennsylvania, and lands contignous or adjacent thereto, and to examine into the feasibility of constructing a dam or dams across the outlet or outlets of said swamp, whereby the waters entering the same may be conserved, to regulate the flow of water in the Shenango and Beaver Rivers. The said Commission shall prepare maps, plans and estimates, and report in writing to the Legislature of one thousand nine hundred and thirteen, giving the results of such survey and examination, and such additional information and recommendations as the Commission shall deem proper." Section 1, Act of June 14th, 1911, appropriation acts No. 721.

"Whereas, By an act approved the fourteenth day of June, one thousand nine hundred eleven, entitled 'An act providing for a survey of Pymatuning Swamp, and an examination into the feasibility of constructing a reservoir therein to conserve the waters draining into said swamp, and making an appropriation therefor,' the Water Supply Commission was directed to survey Pymatuning Swamp, in Crawford County, and the lands contiguous or adjacent thereto, and to examine into the feasibility of constructing a dam or dams across the outlet or outlets of said swamp, whereby the waters entering the same might be conserved, and the flow of water regulated in the Shenango and Beaver Rivers; and

"Whereas, In pursuance of said act, the Water Supply Commission caused said survey to be made, and has presented its report thereon; and

"Whereas, in said report the Water Supply Commission states that the project is a feasible one, that a portion of said Pymatuning Swamp can be converted into a storage reservoir by constructing a dam across the valley of the Shenango river, that the low water flow in the Shenango river would thereby be increased about two hundred seventy-five million gallons per diem, that the reservoir would eliminate any considerable contribution to floods from the territory above the dam, that the proposed reservoir would improve the sanitary conditions of the Shenango and Beaver rivers and of the swamp, that approximately two thousand primary horsepower would be added to existing water power in the Beaver river, that the construction of the dam and reservoir would cause a benefit along the Shenango and Beaver valleys more than commensurate the cost of the project, that the industrial development would be increased, and that the communities in the vicinity of the reservoir would be benefited through improved highways, the creation of an attractive lake, increased water transportation, and better sanitary conditions; therefore,—

"Be it enacted, &c., That the Water Supply Commission of Pennsylvania is hereby authorized and directed to cause a dam to be constructed across the outlet to Pymatuning Swamp, in Crawford County, for the purpose of establishing a reservoir and of conserving the water entering said swamp, and for the purpose of regulating the flow of water in the Shenango and Beaver rivers. The dam shall be constructed and the reservoir established in accordance with plans and specifications which shall be prepared by, or under the direction of, the commission, and shall be so constructed and established as to conserve said waters in a safe and practical manner, and to regulate the flow therefrom so as to maintain throughout the year as regular a flow of water as possible in said rivers." Section 1, Act of July 25th, 1913, (P. L. 1270).

"In carrying out said plans, the commission may acquire, in the name of this Commonwealth by purchase, condemnation, or otherwise, such lands and materials as may be needed in carrying out the provisions of this act." Section 2, Act of July 25th, 1913, (P. L. 1270).

"In acquiring any of said lands or materials, if the commission cannot agree with the owners thereof, or if the owner cannot be found or is not sui juris, the commission may file its petition in the court of common pleas of the county wherein the lands or materials are situated, praying for the appointment of viewers to ascertain the fair value of such land or material. Thereupon the court shall appoint, from among the members of the board of viewers of the county, three viewers, who, by personal inspection and otherwise of the lands or materials proposed to be acquired, shall ascertain and fix the fair value thereof. The court shall fix a time, not less than ten days nor more than twenty days thereafter, for the viewers to meet, either upon said lands or otherwise. Notice of the time and place of meeting of such viewers shall be given, where practicable, by personal service upon the owner, or by such other service as the court may direct. When the viewers shall have completed their labors, they shall file

their report in writing in the said court. If no exceptions shall be filed thereto within thirty days from the filing of the report, or if no appeal therefrom be filed within said time demanding a trial by jury, the said report shall be confirmed absolutely. After final judgment on any appeal from the award of viewers, an appeal may be had to either the Supreme Court or Superior Court, as the case may require. Except as is otherwise hereinafter provided, in all pending proceedings and proceedings hereafter instituted, the compensation of the viewers, together with all the costs of the proceedings, shall be paid from any of the appropriations heretofore or hereafter made by the Commonwealth of Pennsylvania to the Water Supply Commission and available for the purchase of said lands and for otherwise carrying out the provisions of this act; and in no such case shall the compensation of any of such viewers or the costs of any of such proceedings be assessed against or ordered to be paid by the county in which the proceedings are instituted; but if, upon any appeal, the award of the viewers is not increased or modified in favor of the appellant, the entire cost of the proceedings subsequent to such award shall be paid by the appellant. In so far as practicable the commission may include in one petition proceedings for the condemnation of all land in one county proposed to be acquired.

"In any proceedings under this section the court may appoint such guardian or committees or trustees as the case may require; and may in all cases prescribe the form and manner of service of any notice required in any proceedings under this act." Section 3, Act of July 25th, 1913, (P. L. 1270), as amended by the Act of July 15th, 1919, (P. L. 959).

"The commission is hereby authorized to obtain from the owners of the lands which will be submerged or injured in the State of Ohio, by reason of the construction and operation of the said dam and reservoir, a release or releases of damages which shall result to said land by reason of the construction and operation of the said dam and reservoir, for which releases the commission is hereby authorized to pay such sums of money as it shall deem to be reasonable. All contracts, options and releases shall be in such form as shall be approved by the Attorney General. The Commission shall proceed to the acquisition of the lands necessary for the construction and operation of the said dam and reservoir within the State of Pennsylvania, either by purchase or condemnation, in the manner hereinbefore provided; which lands, in the State of Pennsylvania, may be acquired when, and as deemed advisable by, said commission; and the work of constructing said dam and reservoir may be started as soon as the commission shall deem advisable." Section 4, Act of July 25th, 1913, (P. L. 1270), as amended by the Act of June 18th, 1915, appropriation act No. 592.

"That whenever property in Pennsylvania is injured or destroyed by reason of the erection and maintenance of the dam and reservoir provided for in the act to which this is a supplement, and the Water Supply Commission cannot agree with the owner of such property as to the amount of such damages, the said damages shall be ascertained on the petition of the Water Supply Commission or any person interested, in the manner provided by the act to which this is a supplement for ascertaining damages for property acquired under

authority of said act." Section 1, Act of July 20th, 1917, (P. L. 1128).

"The commission may agree with any person, partnership, association or corporation for the removal, relocation, elevating, lowering, or otherwise changing of any railroad, railway, telegraph line, telephone line, electric light, heat or power line, gas line, road, highway, street or bridge, or any part thereof. If such agreement cannot be made, then such removal, relocation, elevation, lowering, or changing may be done by the commission, and the damages, if any, sustained thereby shall be fixed as in said condemnation proceedings." Section 5, Act of July 25th, 1913, (P. L. 1270).

"No land shall be purchased by the commission until the titles thereto have been approved by the Attorney General."

"When the said dam is completed and said reservoir established, it shall be maintained and operated at the expense of this Commonwealth under the direction of the Water Supply Commission." Sections 6 and 7 of the Act of July 25th, 1913, (P. L. 1270).

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## ARTICLE IV.

### FRENCH CREEK.

"That the Water Supply Commission is authorized and directed to deepen, widen, and improve French Creek in the city of Meadville and in the townships of Hayfield, Vernon, West Mead, Union and East Fairfield, Crawford County, in such manner as to prevent, if possible, said creek from overflowing its banks and causing damages to the highways in the vicinity. Said work shall be performed in accordance with plans and specifications which shall be prepared by or under the direction of the commission, and shall be performed in such a manner as to obviate so far as possible any danger of flood in the vicinity of said creek in the city and townships aforesaid. The work may include, in the direction of the commission, the deepening or removal of any obstruction in the stream, and the construction or repair of retaining walls, or changing the course of the channel wherever it may be found necessary or advisable." Section 1, Act of July 25th, 1917, (P. L. 1191).

"In carrying out said plans the commission may take, injure, or destroy, in the name of this Commonwealth, by purchase, condemnation or otherwise, such lands and materials as may be needed in carrying out the provisions of this act." Section 2, Act of July 25th, 1917, (P. L. 1191).

"In taking, injuring, or destroying any of said lands or material, if the commission cannot agree with the owners thereof, or if the owner cannot be found or is not sui juris, the commission may file its petition in the court of common pleas of the county wherein the lands or materials are situated, praying for the appointment of viewers to ascertain the fair value of such land or material. Thereupon the court shall appoint from among the members of the board of viewers of the county three viewers, who, by personal inspection

and otherwise of the lands or materials proposed to be taken, injured or destroyed, shall ascertain and fix the fair value thereof. The court shall fix a time, not less than ten days nor more than twenty days thereafter, for the viewers to meet, either upon the lands or otherwise. Notice of the time and place of meeting of such viewers shall be given where practicable by personal service upon the owner, or by such other service as the court may direct. When the viewers shall have completed their labors they shall file their report in writing in the said court. If no exceptions shall be filed thereto within thirty days from the filing of the report, or if no appeal therefrom be filed within said time demanding a trial by jury, the said report shall be confirmed absolutely. After final judgment on any appeals from the award of viewers, an appeal may be had to either the Supreme or Superior Court, as the case may require. If upon any appeal the award of the viewers is not increased or modified in favor of the appellant, the entire cost of the proceedings subsequent to such award shall be paid by the appellant. In so far as practicable the commission may include in one petition proceedings for the condemnation of all land to be taken, injured, or destroyed under this act.

"In any proceedings under this section the court may appoint such guardians or committees or trustees as the case may require, and may in all cases prescribe the form and manner of service of any notice required in any proceeding under this act." Section 3, Act of July 25th, 1917, (P. L. 1191).

"When the entire costs of said lands and materials, including expenses, and the cost of said improvement, shall have been ascertained and fixed, as nearly as may be, the Commission may take possession of said lands or materials in the name of this Commonwealth, after giving the sixty days' notice thereof by publication in the counties wherein said lands or materials are located. No part of said lands or materials shall be taken over by the commission, in the name of the Commonwealth, until by agreement with the owner, or by proceedings in condemnation as provided for in this act. The entire cost of all said lands and materials shall be ascertained and fixed as nearly as may be." Section 4, Act of July 25th, 1917, (P. L. 1191).

"The commission may agree with any person, copartnership, association, or corporation for the removal, relocation, elevating, lowering or otherwise changing, of any railroad, railway, telegraph line, telephone line, electric-light, heat, or power line, gas line, road, highway, street, or bridge, or any part thereof. If such agreement cannot be made, than such removal, relocation, elevation, lowering, or changing may be done by the commission, and the damages, if any, sustained thereby shall be fixed as in said condemnation proceedings." Section 5, act of July 25th, 1917, (P. L. 1191).

"No land shall be purchased by the commission until the titles thereto have been approved by the Attorney General." Section 6, act of July 25th, 1917, (P. L. 1191).

## ARTICLE V.

The following rules, governing the practice before the Commission, are submitted for the guidance of those interested:

### RULES CONCERNING WATER AND WATER POWER COMPANIES. NOTICES.

Twenty-one days' notice of the intention to apply for a charter must be given by advertisement in two newspapers of general circulation, printed in the county or counties where the water or water power is to be supplied and water or water power is to be obtained.

Notice of such intention to apply for a charter should give the names of at least three incorporators, designate the time when application for said charter will be made to the Governor, the Act of Assembly under which it is made, the purpose proposed, and the district proposed to be supplied.

Proof of the publication of such notice must be filed in the office of the Secretary of the Commonwealth before the application is presented to the Governor or the Commission, and no application will be acted upon by the Commission until such proof is filed.

### FILING OF PAPERS, MAPS, ETC.

All applications for charters, agreements for the merger and consolidation of two or more companies, and certificates designating the source of supply of a company proposing to purchase the property and franchises of another company, should be filed in the office of the Secretary of the Commonwealth, and a copy thereof should be furnished this Commission.

Application for charters should be on file in the office of the Secretary of the Commonwealth during the period of publication of notice.

Application for a new or additional source of supply should be filed in the office of the Secretary of the Commonwealth and a duplicate of such application should be filed in the office of this Commission.

No application for a charter, or for the approval of an agreement for the consolidation and merger, or for the approval of a source of supply by a company proposing to purchase the property and franchises of another company, or of an application for a new or additional source of supply, will be considered by the Commission until all fees and bonus required by law shall have been paid.

Applicants for charters for water or water power companies, or for a new or additional source of supply, or for the approval of an agreement of merger and consolidation, or of the purchase of the property and franchises of one company by another shall furnish the commission with maps and plans in sufficient detail to show in the case of proposed water supply companies the source of the water, method of collection, and distribution and community or communi-

ties to be supplied. In the case of proposed water power companies, said maps and plans should show the stream or streams to be used for water power, the method of development and the destination of the power. They shall also submit a written description of the proposed works, authentic data concerning the character and volume of the water to be used, and such other information as the Commission may deem necessary for intelligent disposition of the application. Lists of questions concerning proposed water power developments and proposed water supply systems are furnished applicants upon receipt of applications for charters.

All applications for the incorporation of water and water power companies, or for a new or additional source of supply, or for the approval of an agreement of merger and consolidation, and all certificates designating the source of supply of a water company proposing to purchase the property and franchises of another company, together with all plans and information required in connection with the same, must be on file in the office of the Commission at least ten days, in order to permit of investigation and report by its Engineering Division.

In all applications for the incorporation of water and water power companies, or for a new or additional source of supply, and in all agreements of merger and consolidation and all certificates designating the source of supply of a company proposing to purchase the property and franchises of another company, the proposed source of supply must be stated specifically by reference in measured distance from some known and permanent point.

All approvals by the Commission are conditioned upon, and subject, to a compliance with the rules of the Department of Health, relative to the purity of water.

## PROTESTS, PETITIONS AND HEARINGS.

A protest against the approval of any application for a charter, or of the merger and consolidation of two or more companies, or of the purchase of the property and franchises of one company by another, or of a new or additional source of supply, should clearly and specifically set forth the ground for such protest and the interest of the protestants, giving the full and correct name of the company or companies against whose application for a charter, or for a new or additional source of supply, or against whose merger and consolidation, or purchase, it is filed, and in case of an application for a charter, designate the date when the application is advertised to be made, and should be verified by affidavit. A day for hearing will then be appointed at which time all parties will be heard by counsel or in person.

Matters relating to the utilizing, conserving or distributing the waters of the State may be brought to the attention of the Commission by petition verified by affidavit which shall fully set forth all the facts and the names of the persons, firms or corporations affected thereby, and such persons, firms or corporations will be given an opportunity of being heard relative to the matters alleged.

Answers to complaints against a water company by a municipality, under the provisions of the act of May 28th, 1907, shall be made in writing, under the seal of the corporation, and shall be verified by

oath or affirmation of the president or secretary of such company, and be filed with the Commission, within thirty days after service of notice upon the company by the municipality. If deemed necessary a day for a hearing will be fixed, at which time the parties will be heard by counsel or in person.

## RULES CONCERNING THE CONSTRUCTION AND REGULATION OF DAMS, OR OTHER STRUCTURES OR OBSTRUCTIONS, IN, ALONG, ACROSS OR PROJECTING INTO ANY STREAM OR BODY OF WATER WHOLLY OR PARTLY WITHIN, OR FORMING PART OF THE BOUNDARY OF, THE COMMONWEALTH OF PENNSYLVANIA.

Applications for the consent or permit of the Water Supply Commission for the construction of any dam or other water obstruction, or any change therein, or addition to an existing water obstruction or to change or diminish the course, current or cross-section of any stream or body of water, wholly or partly within, or forming part of the boundary of, this Commonwealth, must be made upon blanks which will be furnished by the Commission upon request. Applicants shall furnish the Commission with complete maps, plans, profiles and specifications of the proposed work, which shall accompany the application, and shall also furnish the Commission with such other information and data relating thereto as the Commission may require and such application must be on file in the office of the Commission at least ten days previous to the regular meeting at which such application will be considered.

When required by the Commission, public notice of application to be presented to the Water Supply Commission, shall include the purpose of the application, names of the applicants, location of the proposed work and the date of hearing.

In the event of the approval of such application by the Commission, a permit will be issued to the applicant, granting consent and permission to construct, erect, build and maintain said water obstruction, or to make a change in or addition to said water obstruction, subject to such conditions, limitations and regulations as may be prescribed by the Commission, and providing, of course, that full lawful authority exists for making such obstruction.

All maps, plans, profiles and specifications, information and data, submitted with the application, will remain on file in the office of the Commission.

Subsequent to the issuance of a permit by the Water Supply Commission for the construction of any dam or other water obstruction, or any change therein, or addition to an existing water obstruction, or to change or diminish the course, current or cross-section of any stream or body of water, wholly or partly within, or forming part of the boundary of, this Commonwealth, no change or modification in the plans or specifications as approved, or deviation from the conditions prescribed by the Commission in the permit issued, shall be made without first making application for and receiving the approval of the Commission in writing therefor.

Protests against application for the consent or permit of the Commission for the construction any dam or other water obstruction, or any change therein, or addition to an existing water obstruction

or to change or diminish the course, current or cross-section of any stream or body of water wholly or partly within, or forming part of the boundary of, this Commonwealth, may be filed with the Commission by any party in interest, and should clearly set forth the ground of the protest and the interest of the protestants, giving fully and correctly all the necessary facts, verified by affidavit. A day for hearing will be fixed, if deemed necessary by the Commission, at which time all parties interested will be heard by counsel or in person.

The Commission has the power, upon complaint, or upon its own initiative, to cause an investigation or examination to be made of any dam, or other water obstruction now existing or hereafter constructed. The complainant should set forth all the facts and circumstances and the name of the person or persons, partnership, association, corporation, county, city, borough, town or township causing such obstruction or change, the name of the river, stream or body of water so affected, the place at which the obstruction or change is being made, the character thereof and the damage, or probable damage, occasioned, or to be occasioned, thereby. Said complaint should be verified by affidavit.

Violations of the law by the unlawful obstruction of any body of water, or change in the course, current or cross-section thereof, may be brought to the attention of the Commission in writing, setting forth all the facts and circumstances, and the name of the person, corporation or municipality causing such obstruction or change, the name of the river or stream so affected, the place at which the obstruction, or change, is being made, the character thereof, and the damage or probable damage, occasioned, or to be occasioned, thereby.

Address all communications to "The Water Supply Commission of Pennsylvania," Harrisburg, Pennsylvania.

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## ARTICLE VI.

### DAM DIVISION.

The following rules and instructions concerning applications and plans for the repair, alteration and construction of dams, are submitted for the guidance of those interested. See article V in appendix.

In accordance with the provisions of the Second Section of the Act of the General Assembly, approved June 25th, 1913, (P. L. 555), it is unlawful to construct any dam or other water obstruction, or to make any change in or addition to an existing dam "without the consent or permit of the Water Supply Commission of Pennsylvania, in writing previously obtained, upon written application to said Commission therefor."

Section 3 provides as follows:—"Each application for the consent or permit required by the second section of this act shall be accom-

panied by complete maps, plans, profiles and specifications of such water obstruction, or of the said changes or additions proposed to be made, and such other data and information as the Commission may require."

## APPLICATION.

Application for a permit shall be made on a blank form which will be furnished upon request, and shall be signed by the owner or owners of the proposed or existing dam. If privately owned, the individual owner, or each member of a partnership shall sign the application. If owned by a corporation, it shall be signed by the president or vice-president, attested by the secretary and the corporate seal affixed; and if owned by a municipality or county it shall be signed by the chief officer or commissioners, attested by the clerk and the municipal or county seal affixed.

## PLANS AND SPECIFICATIONS.

The plans and specifications to be submitted with each application should illustrate and describe in detail the proposed structure and the methods to be employed in its construction, and should include the following:—

(a) Location plan, including tributary drainage area;
(b) General plan of dam and reservoir;
(c) Longitudinal section of dam, or cross-section of valley at site of dam;
(d) Typical cross-section of dam;
(e) Detailed plans of spillway, waste-way or over-flow;
(f) Detailed plans of outlet or controlling works;
(g) For all masonry dams, diagrams of forces showing the results of analyses;
(h) For reinforced concrete dams, detailed reinforcement plans.

(a). The location plan or map should show the stream on which the dam is to be built, the tributary drainage area and the principal topographical features of the surroundings country, such as streams, roads, railroads, cities, towns, etc. The scale of such a plan should be about one inch to the mile, unless this scale would make a plan of inconvenient or unwieldy size, in which case a different scale may be used.

(b). The general plan of the dam and reservoir should show accurately the position of all essential details, such as spillway or waste-way, its point of discharge into the stream, pipes through the dam, inlets, outlets, screen chamber, gate or valve house, headrace, canal, mill or power plant, tail race, etc. The area of the water surface of the pond or reservoir should be shown in acres, and the capacity indicated in cubic feet or gallons.

(c). The longitudinal section of the dam or cross-section of the valley at the site of the dam should show the elevation of the crest of the dam, the elevation of the flow line of the reservoir, the original surface of the ground, the nature and depth of the underlying strata, and the probable depth of excavation for the foundation or cut-off.

Note.—Sub-surface investigations should be made at the site of the dam, by means of test pits or borings.

(d) The typical cross-sections, which should be drawn to a scale of not less than 1 inch=10 feet, should include a maximum section of the dam. They should show the original surface of the ground, and sub-surface conditions as disclosed by test pits or borings, the probable depth of excavation for foundations or cut-offs, the elevation of the crest of the dam, and the elevation of the flow line or normal water surface in the reservoir. If the dam is of earth the depth of stripping should be shown, the position, material and dimensions of the cut-off or core-wall, the width of crest, the slope protection, the position and dimensions of outlet pipes or culverts and cut-offs to prevent seepage along such structures, the disposition of different qualities of earth, if of varying quality, and the methods and manner of construction. If of masonry, the cross-sections should show all dimensions and should indicate the position and kinds of masonry to be included in the structure.

(e) The detailed plans of the spillway, waste-way or overflow should show the depth of the opening and its length, together with the width and shape of the crest, grade and shape of the approach and discharge channels, if any, methods of protecting the toe of the dam or end of the discharge channel from erosion; and should give the dimensions of all walls, floors, paving, etc.

Note.—Inasmuch as a large percentage of dam failures is due to lack of adequate spillway capacity, special attention should be paid to this feature of the design.

(f) The detailed plans of the outlets or controlling works should show the location and dimensions of all valves or sluice gates, intakes, screen chambers, racks, outlet towers, and gate-houses and appurtenances.

(g) The diagrams of forces for masonry dams should show the results of the graphical or mathematical analyses, together with the weights and different conditions assumed, and the maximum pressures under these conditions.

(h) For reinforced concrete dams, in addition to the above, detailed plans should be submitted showing the sizes and spacing of all reinforcement, expansion joints, dimensions, etc.

## SPECIFICATIONS.

The specifications should describe carefully and in detail the preparation of the site of the dam, the materials to be employed in its construction, their arrangement in the structure, the methods to be used and the results to be obtained.

If stone or concrete masonry is to be used the different kinds or classes should be carefully described, and the materials and proportions accurately specified.

If an earth embankment forms an essential portion of the dam the quality or qualities of material should be specified, and the manner of depositing in the embankment; and if in layers, the thickness of the layers, weight and kind of roller to be used, manner of sprinkling, size of stone to be allowed to remain in the material, etc., should be specified. The slopes to be used on the upstream and downstream sides should be indicated, as well as the manner of protecting each slope from erosion.

## REPAIRS.

If it is proposed to make changes in or alterations to an existing dam, or to use flash-boards, or to make repairs, other than ordinary maintenance work, an application for a permit should be filed with the Commission. The plans accompanying applications in such cases should show in detail the existing conditions as well as the proposed changes.

## SPECIMEN PLANS.

The following plans are specimen plans only, and are intended to show the scope of information desired rather than to indicate a preference for any particular type of dam or of construction details on the part of the Commission.

## PROCEDURE.

Upon receipt by the Commission of an application accompanied by complete plans and specifications, it is referred to the Engineering Department for investigation and report. An examination of the site of the proposed dam is then made by a representative of the Commission, in company with the owner or his engineer. A complete analysis and study of the design is made, and such deficiencies as may be found to exist are called to the attention of the applicant in order that revised plans may be prepared. If the design is satisfactory a report is written and submitted to the Commission. Not less than ten days should be allowed for examination and report by the Engineering Department.

## CONDITIONS ATTACHED TO PERMITS.

When an application for a permit to construct or repair a dam is approved by the Commission the following general conditions are made a part of the permit, together with such other conditions as are considered necessary in the particular case under consideration:—

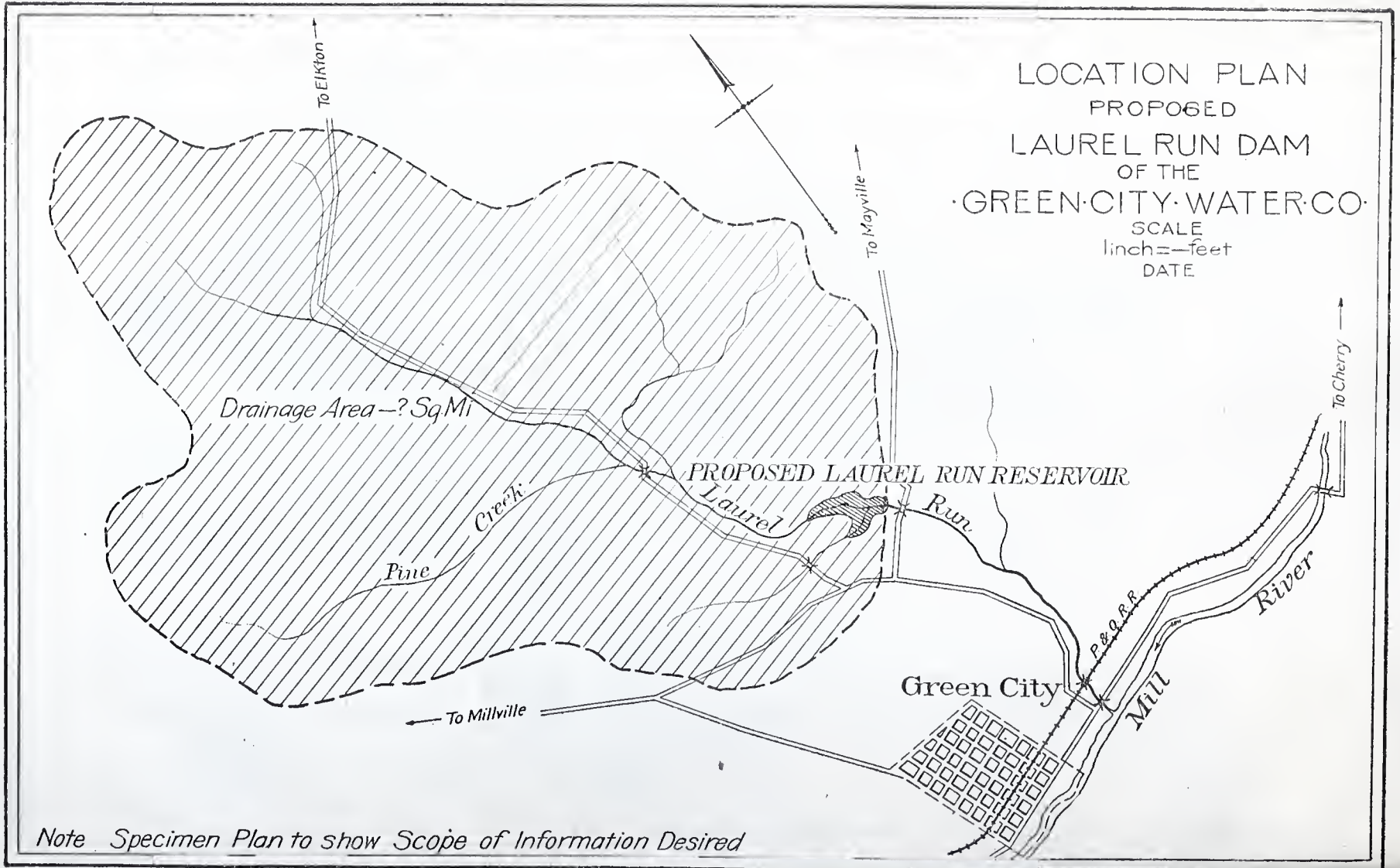
1. That the Commission shall be notified in advance of the proposed time of commencement of work upon the dam and of the time of the preparation of the foundation for the same; that work shall not be started upon the foundation subsequent to this notice until the said foundation has been approved by the Engineer of the Commission or his representative;

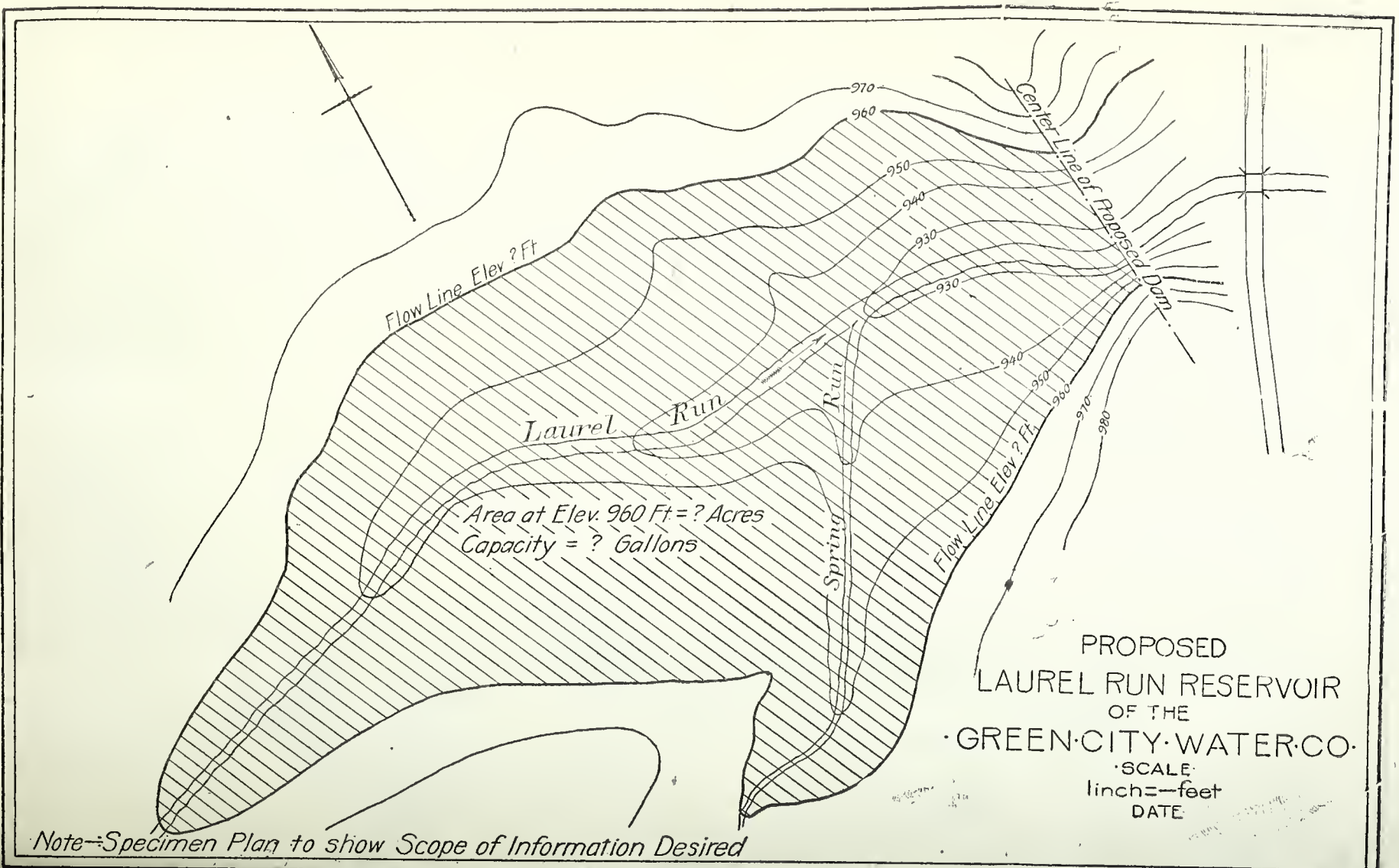
2. That the dam shall be built under the direction of a competent engineer, and that he or his representative shall be on the ground daily (or frequently, depending upon the importance of the project) during construction to interpret and enforce the plans and specifications;

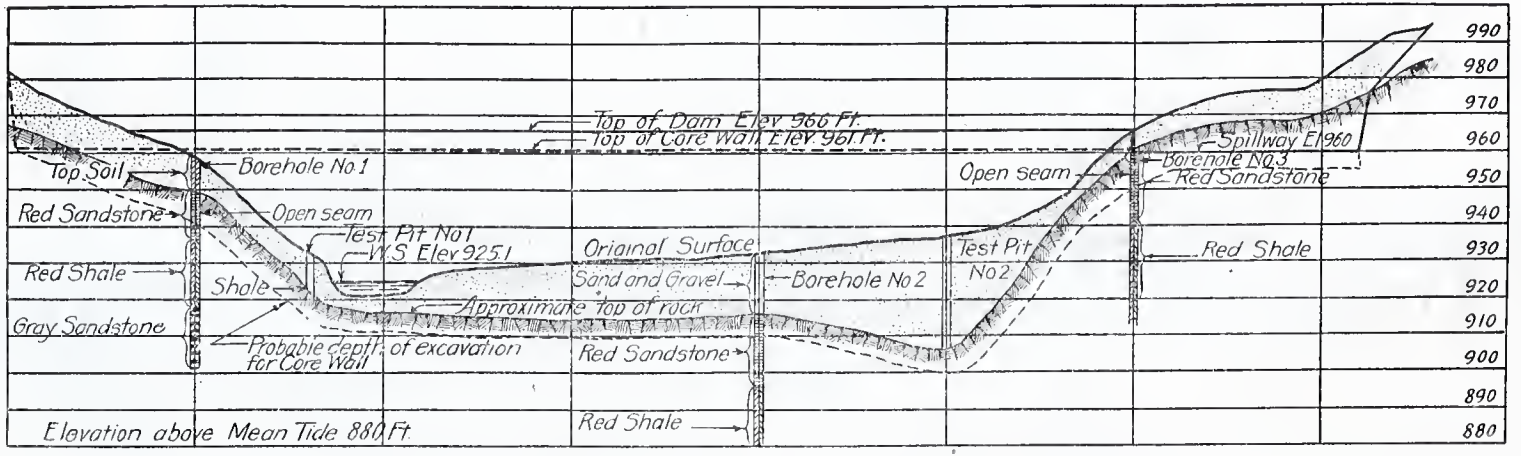
3. That a detailed report upon the status of the construction shall be furnished to the Engineer of the Commission on the 15th and last days of each month;

Note.—The object of this condition is to enable the Commission to have accurate knowledge of the progress of construction, and these reports should be make regularly until the work is completed, even when a representative of the Commission has made a recent visit.

4. That the construction of the dam shall at all times be subject to inspection by representatives of the Commission, and that no changes in the plans as approved shall be made except with the written consent of the Commission or its Engineer. The Commission reserves the right to require such changes as may be deemed necessary during the progress of construction.


LOCATION PLAN
PROPOSED
LAUREL RUN DAM
OF THE
·GREEN·CITY·WATER·CO·
SCALE
1inch=—feet
DATE
To Elkton
To Mayville
To Cherry
Drainage Area—? Sq.Mi
PROPOSED LAUREL RUN RESERVOIR
Laurel Run
Pine Creek
P.&Q.R.R.
Green City
Mill River
To Millville
Note Specimen Plan to show Scope of Information Desired


970
960
950
940
930
930
940
950
960
970
980
Center Line of Proposed Dam
Flow Line Elev. ? Ft
Laurel Run
Spring Run
Area at Elev. 960 Ft = ? Acres
Capacity = ? Gallons
Flow Line Elev. ? Ft.
PROPOSED
LAUREL RUN RESERVOIR
OF THE
·GREEN·CITY·WATER·CO·
·SCALE·
linch=—feet
DATE
Note—Specimen Plan to show Scope of Information Desired




# LONGITUDINAL SECTION

PROPOSED

# LAUREL RUN DAM

OF THE

# GREEN·CITY·WATER·CO:

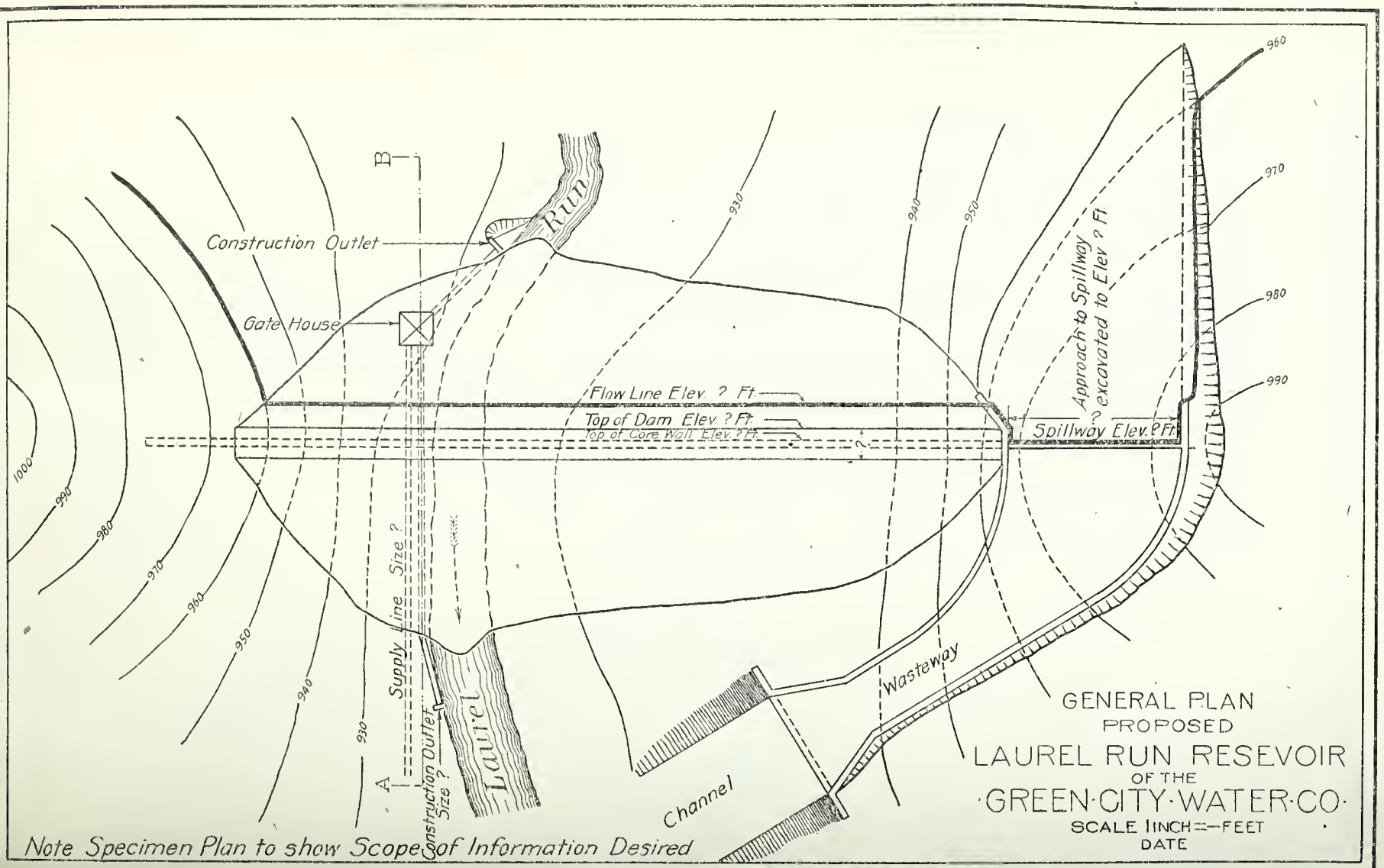
SCALE

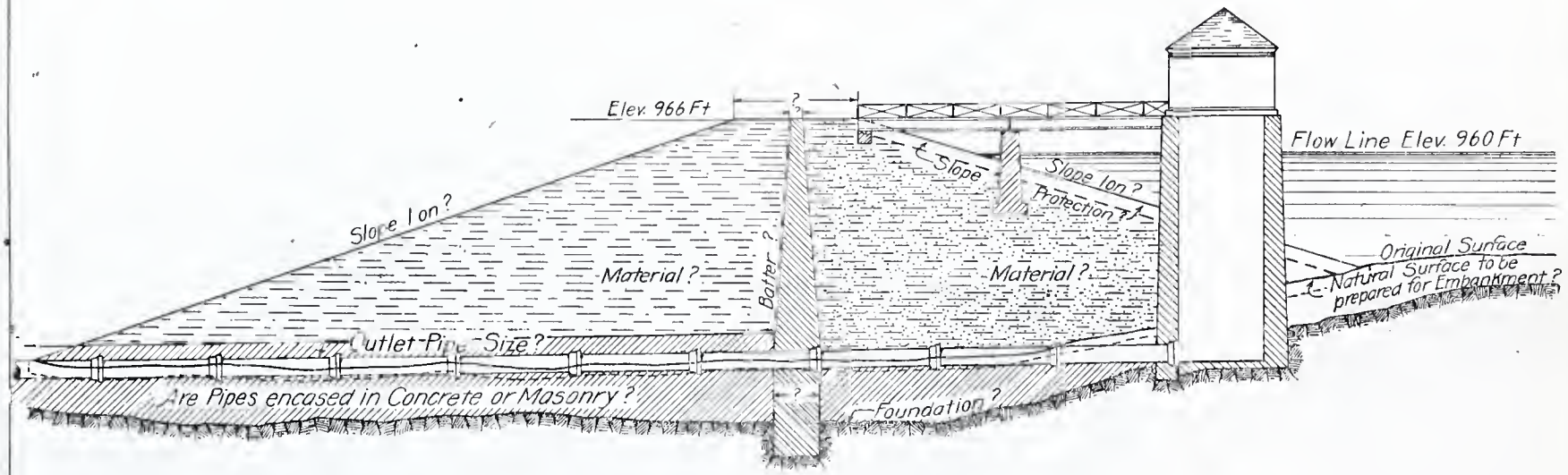
·HORIZONTAL·1in=—ft.

·VERTICAL·1in=—ft.

DATE

Note Specimen Plan to show Scope of Information Desired

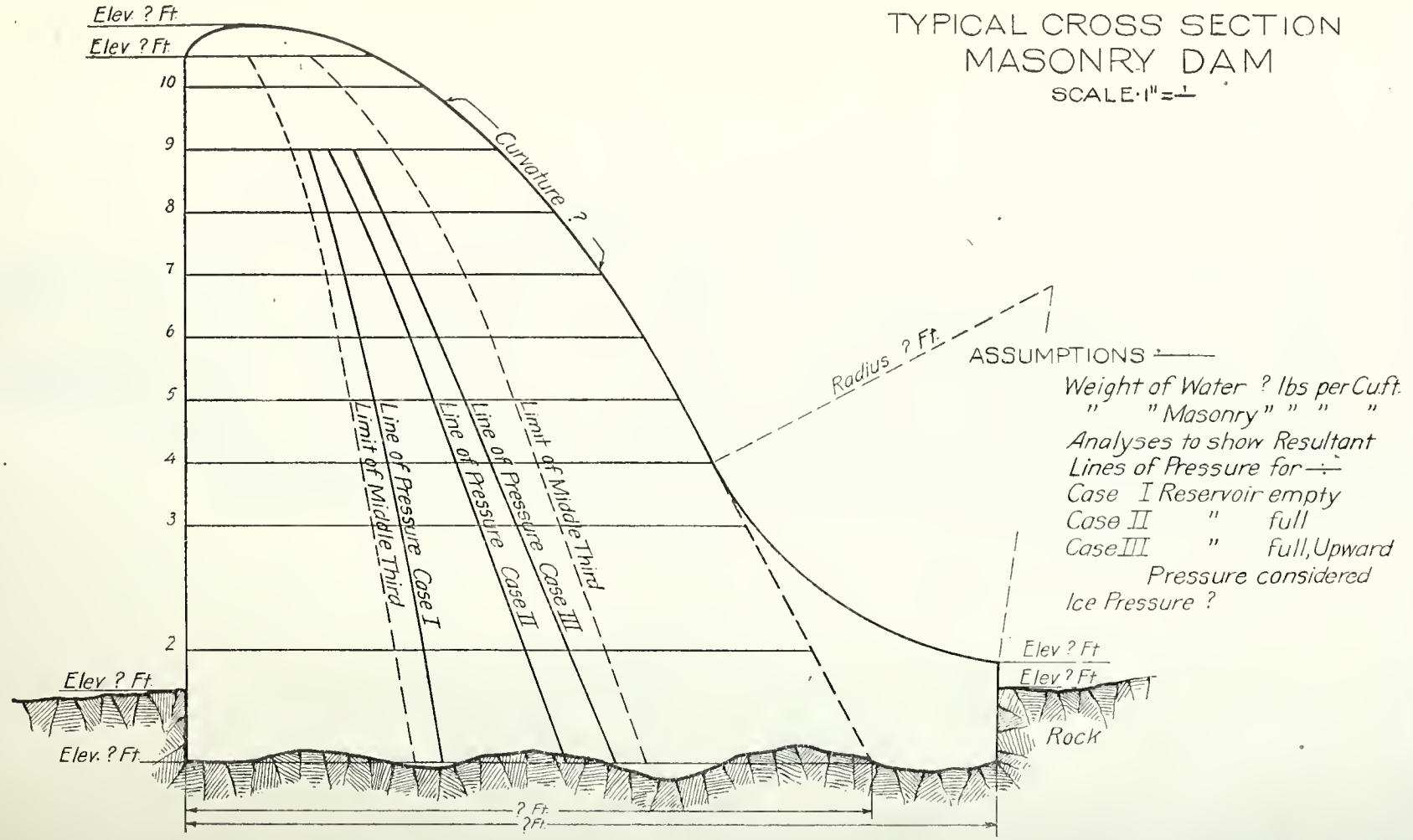

B
Run
Construction Outlet
Gate House
Flow Line Elev. ? Ft.
Top of Dam Elev. ? Ft.
Top of Core Wall Elev. ? Ft.
Spillway Elev. ? Ft.
Approach to Spillway ? excavated to Elev. ? Ft.
960
970
980
990
1000
930
940
950
910
920
Supply Line Size ?
A
Construction Outlet Size ?
Laurel Run
Channel
Wasteway
GENERAL PLAN
PROPOSED
LAUREL RUN RESEVOIR
OF THE
GREEN CITY WATER CO.
SCALE 1 INCH = — FEET
DATE
Note Specimen Plan to show Scope of Information Desired




# CROSS SECTION
A – B
PROPOSED
# LAUREL RUN DAM
OF THE
# GREEN CITY WATER CO.

SCALE
1 inch = — feet
DATE

*Note — Specimen Plan to show Scope of Information Desired*




Note—:Specimen Plan to show Scope of Information Desired

# ARTICLE VII.

## ENCROACHMENT DIVISION.

The following rules and instructions concerning applications and plans for the construction, alteration or permanent repair of bridges, walls, wharves, fills or other water obstructions, exclusive of dams, are submitted for the guidance of those interested. Section two of the Act of General Assembly, P. L. 555, approved June 25th, 1913, makes it unlawful to construct or make any change in or addition to any water obstruction (wall, wing-wall, wharf, embankment, abutment, projection or similar or analogous structure or any other water obstruction), in, along, across or projecting into any stream or body of water "without the consent or permit of the Water Supply Commission of Pennsylvania, in writing, previously obtained upon written application to said Commission therefor."

Section three provides that "Each application for the consent or permit required by the second section of this act shall be accompanied by complete maps, plans, profiles and specifications of such water obstruction, or of the said changes or additions proposed to be made, and such other data and information as the Commission may require."

## APPLICATION.

Application for a permit shall be made on a blank form, which will be furnished upon request, and shall be signed by the owner or owners of the proposed water obstruction. If privately owned, the individual owner, or each member of a partnership, shall sign the application. If owned by a corporation, it shall be signed by the president or vice-president, attested by the secretary and the corporate seal affixed; and, if owned by a municipality, township or county, it shall be signed by the chief officer, supervisors or commissioners, attested by the clerk and the municipal or county seal affixed.

A concise statement is required, giving the nature of the work for which application is made, the name of the stream and accurately locating the obstruction by distance from the mouth, county, township or municipal boundary, and describing the purpose of and necessity for the proposed obstruction.

## PLANS AND SPECIFICATIONS.

Applications must be accompanied by complete maps, plans, profiles and cross-sections, indicating the nature, location, extent and dimensions of the proposed obstruction, and a copy of the specifications, when prepared in connection therewith.

The appended plates are intended to show the scope of the information desired and the data essential for the thorough study of the proposed water obstruction, rather than to indicate a preference for any particular type or detail of construction.

In addition to the above general requirements, the following more specific information is necessary in the consideration of the various forms of water obstructions:

## BRIDGES AND CULVERTS.

For such structures the following information is required: drawings, as indicated on Plate I, to include location plan; cross-section at proposed bridge site; cross-section of present bridge (if one exists), profile of stream for a reasonable distance above and below bridge site, showing slopes of bed, normal water surface and flood water surface. If the bridge is on a skew, give the angle and the direction of the line of flow.

In addition to the above, the following information, when submitted, will expedite action upon application; total drainage area above bridge site; description of watershed; length of stream from source to bridge site and to the mouth; character of stream bed and banks; extent and depth of overflow during floods; effect of previous floods upon bridges along same stream, giving location of such bridges, their span and clearance; whether bridge will be within backwater influence of parent stream.

Photographs of the bridge site, including the stream channel and roadway approaches, will help the Commission in acting upon applications. The reverse side of the prints should contain a description of the photograph, giving date, location and object.

## FILLS.

Plate II shows typical drawings required in connection with applications for fills. The plan should show the stream for a distance of at least several hundred feet above and below the limits of the proposed fill and to points well behind the limits of maximum high water on each bank. Top and bottom of proposed and existing banks should be clearly indicated and if harbor lines have been established they should be shown on both plan and cross-sections, as should also the pool full elevation, when a dam exists below the site. Where possible, contours and elevations of the stream bed should be indicated. All proposed work must be referenced to centre lines of railroads, buildings, or other fixed points.

The cross-sections should be taken entirely across the stream to above maximum flood water elevation and the height and date of maximum flood indicated thereon. These sections should be taken at intervals above, opposite and below the proposed work, particularly at the narrowest and widest sections, and plotted to the same horizontal and vertical scale. Detail cross-sections of the proposed fill should be taken at not less than 100 foot intervals and indicate the existing and proposed slopes, kind of material to be used in the fill and the method of protecting it from erosion. Excavation proposed in the stream channel should be clearly indicated.

A profile of the stream should be submitted, showing the slope of bed and normal and flood surface, between points well above and below the proposed work.

Much of the information suggested under "Bridges and Culverts," will facilitate consideration of applications for fills.

## WALLS.

Plate III shows typical drawings required in connection with applications for walls. The plan, profile and cross-sections should give the same data as indicated above for fills, and, in addition, detail cross-sections of the wall are required, in order that analyses may be made for stability against overturning, sliding, shearing and crushing. The plans and specifications should indicate the materials to be used in construction, the methods to be employed and the character and weight of the material to be used for back-filling. The character and depth of foundation should be indicated, and if the wall is to be carried on pile or grill work, details should be submitted with reference to spacing and size of piles and depth to which they are to be driven. If the fill or wall is designated to carry dead or live loads, their intensities should be indicated. In reinforced concrete design, full details should be submitted, in order to permit of analysis, and proposed methods of anchoring into the bank, adjacent walls, or protective work shown. All peculiarities in design or construction of the wall and banks or channel of the stream should be clearly set forth. Photographs and general information, as outlined under "Bridges and Culverts," will be of value.

## STREAM CHANNEL CHANGE AND PROTECTION.

In connection withe this type of work, plans, profile and cross-sections are required as outlined under "Fills," these data to be submitted for both the old and new channels. The proposed method of protecting the banks of the new channel from erosion should be clearly indicated and the manner of disposing of excavated material and treatment of old channel set forth.

## WHARVES, COAL TIPPLES AND MISCELLANEOUS OBSTRUCTIONS.

Plans, profiles and cross-sections should be submitted as outlined above, modified in accordance with the proposed obstruction. In addition, detail plans are necessary, giving the dimensions and construction details of the proposed work.

## GENERAL.

If not incompatible with the filing system of the applicant, the Commission would prefer that plans be made in multiples of legal size document paper. Titles should be attached to each map, giving clearly the classification of work, date, scale, name of stream and accurate location. When revised plans are submitted they should be so marked and dated.

Upon receipt by the Commission of the application, accompanied by complete plans and specifications, it is referred to the Engineering Department for investigation and report. An examination of the site of the proposed encroachment is usually made, in company with the owner or his engineer, and, after complete study and analysis, any deficiencies which may be found to exist are called to the attention of the applicant, in order that the plans may be revised accordingly.

When the application and plans have been approved by the Commission, a permit is forwarded to the applicant. The application, plans and all data submitted therewith remain on file in the office of the Water Supply Commission. Not less than ten days should be allowed for examination and report by the Engineering Department.

# VIII FORMS.

## APPLICATION FOR CHARTER OF WATER COMPANY—INFORMATION AS TO SOURCE OF SUPPLY UNER ACT OF JUNE 7, 1907, (P. L. 455).

FORM 4.

### WATER SUPPLY COMMISSION OF PENNSYLVANIA.

QUESTIONS TO BE ANSWERED BY PROPOSED WATER COMPANIES.

1. Name of Company. .....

2. Source of supply. .....

   A. Name, location and description of river, creek, pond, lake or springs or other body of water which will be used. .....

   B. What is the approximate storage capacity and area of natural lake or pond, if one is used? .....

   C. What is the drainage area tributary above the intake; what is the per cent. of this area which is forest covered, and the population residing thereon? .....

   D. Is this source used at present by any municipality or corporation? .....

3. How much water do you anticipate drawing from this source per twenty-four hours, maximum and average? .....

4. A. Will water be supplied by gravity or by pumps? .....

   B. Capacity of pumps (if used)? .....

5. A. What population do you propose to be prepared to supply?

   B. Population at present? .....

6. Describe the intake of the proposed works. .....

7. Describe and locate the reservoirs, stating capacity, area, etc. .....

   A. Storage. .....

   B. Distributing. .....

8. Give name and address of Engineer or Designer. .....

Signed .....

Secretary, proposed, .....

..... Water Company.

## APPLICATION FOR CHARTER OF WATER POWER COMPANY —INFORMATION AS TO SOURCE OF SUPPLY PLANT &c. UNDER ACT OF JUNE 7, 1907, (P. L. 455).

FORM 3.

### WATER SUPPLY COMMISSION OF PENNSYLVANIA.

QUESTIONS TO BE ANSWERED BY PROPOSED WATER POWER COMPANIES.

1. Name of Company. .....

2. Name of stream on which power is to be developed, .....

   A. Location of plant. .....

   B. Area of drainage basin above site of plant. .....

   C. Names and addresses which you know of corporations, firms or individuals using this stream for water power or water supply purposes, above and below site of works. .....

3. Describe the proposed plant.

   A. Location of dam or wing wall and intake of headrace. .....

   B. Length of headrace, its cross section and slope. .....

   C. Location of power house. .....

4. Power development.

   A. Amount of power to be developed. .....

   B. Natural fall of stream. .....

   C. Available head on wheels. .....

   D. Size and number of wheels. .....

   E. Record of flow of stream (if any). .....

   F. What percentage of the minimum flow will be deflected over the wheels? .....

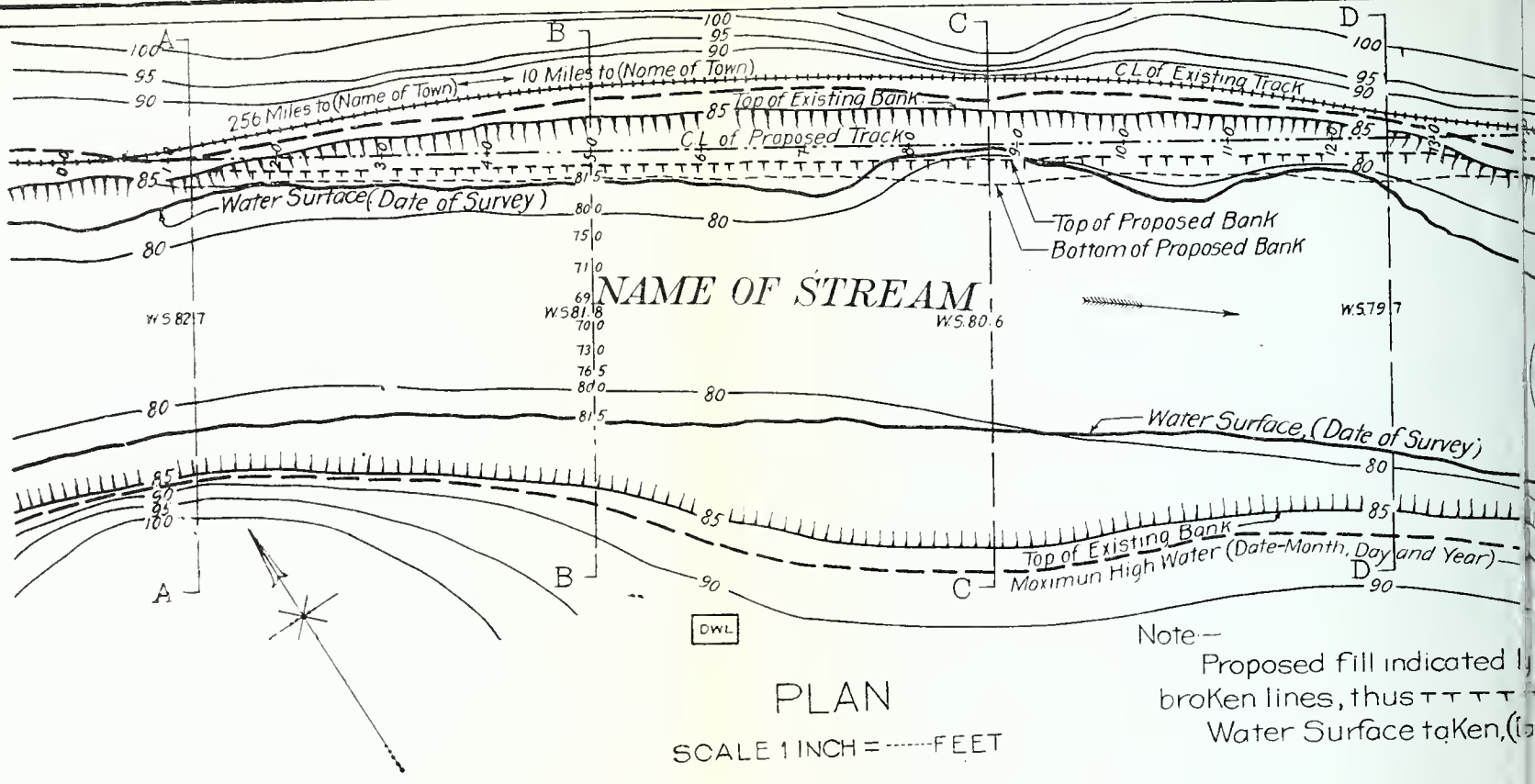
5. Storage.

   A. What storage will be available, in cubic feet, in pool formed by dam? .....

   B. What area will be flooded? .....

6. Dam.

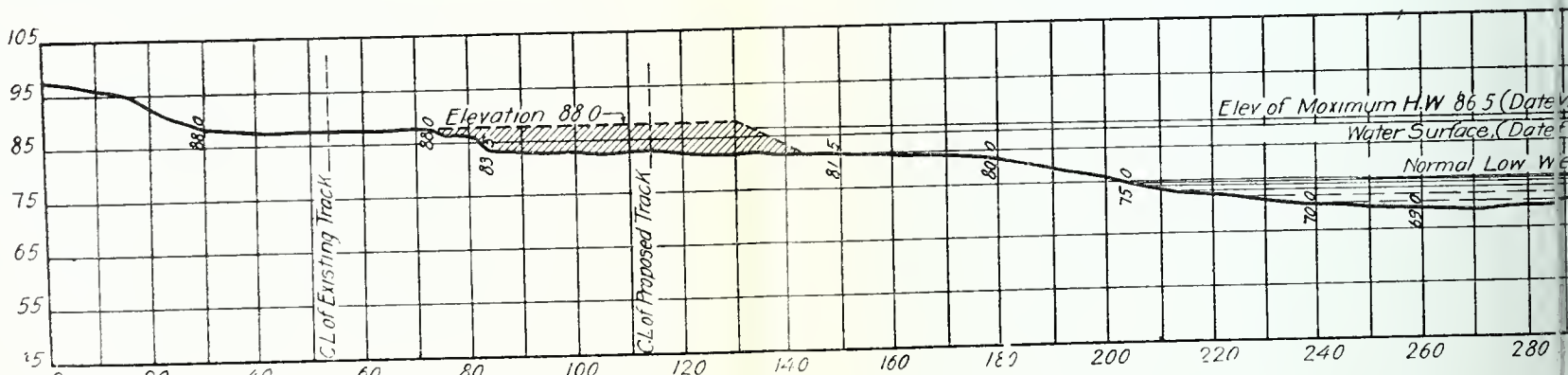
   A. Length. .....

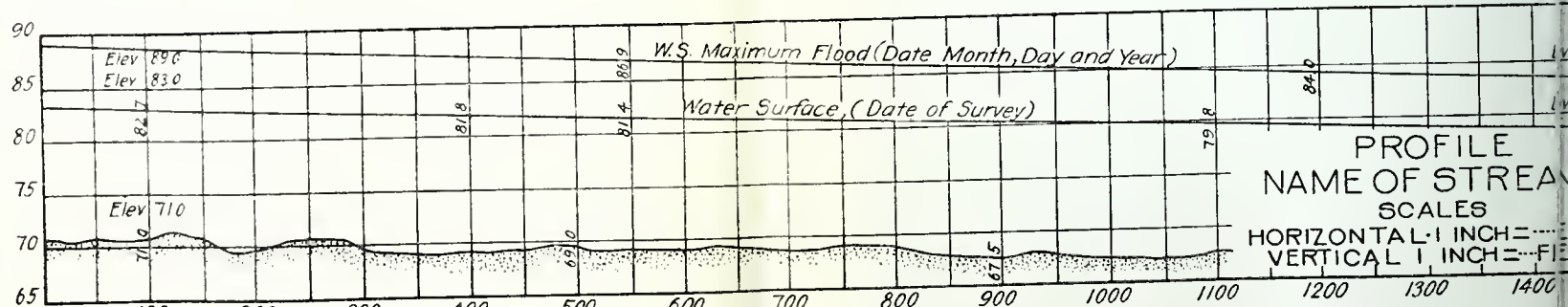



PLAN

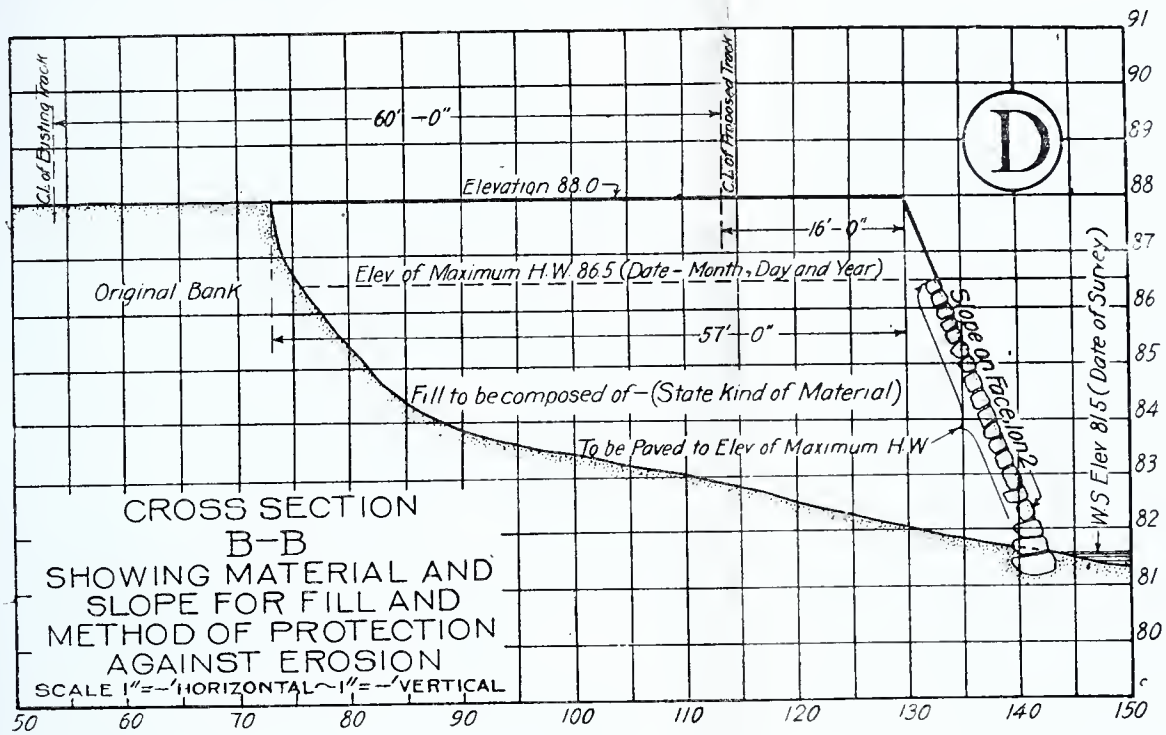
SCALE 1 INCH = ·····FEET

Note:—
Proposed fill indicated l
broKen lines, thus T T T T
Water Surface taKen, (



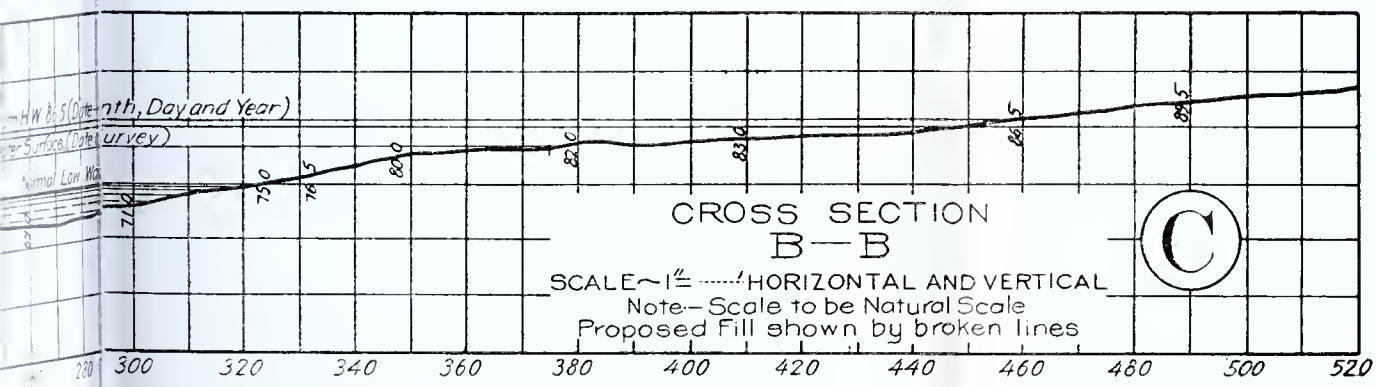




PROFILE
NAME OF STREA
SCALES
HORIZONTAL 1 INCH =·····
VERTICAL 1 INCH = ···FE




A

face taken (Date - Month, Day and Year)




B

# NAME OF COMPANY
# PROPOSED FILL
ALONG THE
# NAME OF STREAM
AT OR NEAR
# NAME OF TOWN, TOWNSHIP AND COUNTY
SCALES AS SHOWN
DATE

B. Height. .....

.....

C. Log Chute. .....

.....

.....

D. Fishway. .....

.....

7. A. Will power be transmitted or used at site? .....

.....

B. To what points is it intended to distribute it? .....

.....

.....

.....

8. Name and address of Engineer. .....

.....

Signed .....

Secretary, proposed .....

.....

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## APPLICATION FOR A NEW OR ADDITIONAL SOURCE OF SUPPLY OF WATER OR WATER POWER BY CORPORATIONS FORMED UNDER THE ACT OF APRIL 29, 1874, (P. L. 73).

FORM 13.

*To the Secretary of the Commonwealth of Pennsylvania:*

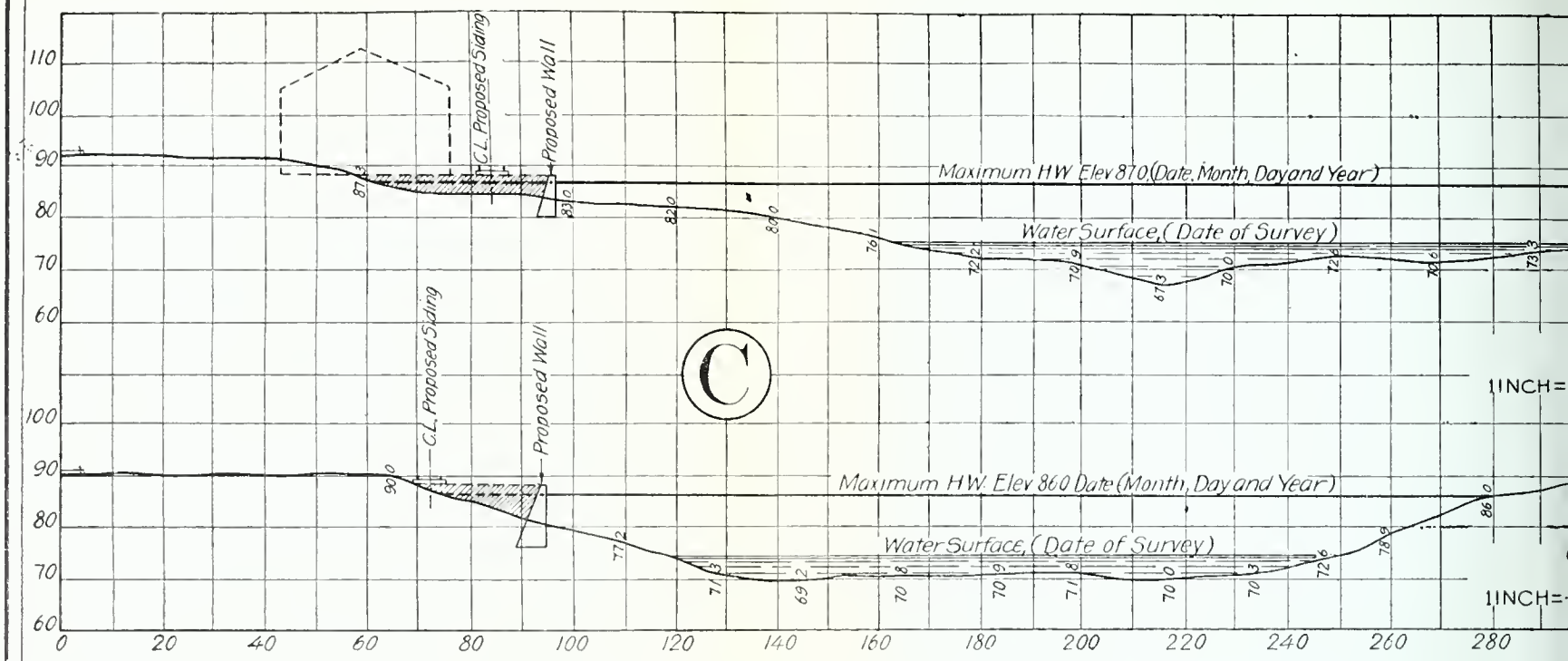
In compliance with the requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to require all water and water power companies hereafter incorporated, or hereafter formed by merger and consolidation, or hereafter purchasing the property and franchises of any other such company, to designate the exact source of their supply of water or water power; and to require all existing water and water power companies, merging and consolidating or purchasing the property and franchises of any other such company, to accept the provisions of this act, and of the act approved April thirteenth, one thousand nine hundred and five, entitled 'An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies, incorporated under law,' and providing the manner in which water and water power companies, subject to the provisions of this act, may secure a new or additional source of supply for their water or water power," approved the 7th day of June, A. D. 1907, we, the undersigned, president and secretary of the .....

.....

Company, a corporation of the Commonwealth of Pennsylvania, duly created on the ..... day of ..... A. D. 19 , under the provisions of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An act to provide for the formation and regulation of certain corporations," approved the 29th day of April, A. D. 1874, and the supplements thereto, and the amendments thereof,

for the purpose of .....

hereby certify that the following is a full, true and correct copy of resolutions passed and adopted by a vote of a majority in interest of the stockholders of said company, at a meeting of said stockholders duly called and held at the office of the company in ..... on the..... day of ..... A. D. 19 :




NAME OF COMPANY

PROPOSED WALL

·ALONG THE·

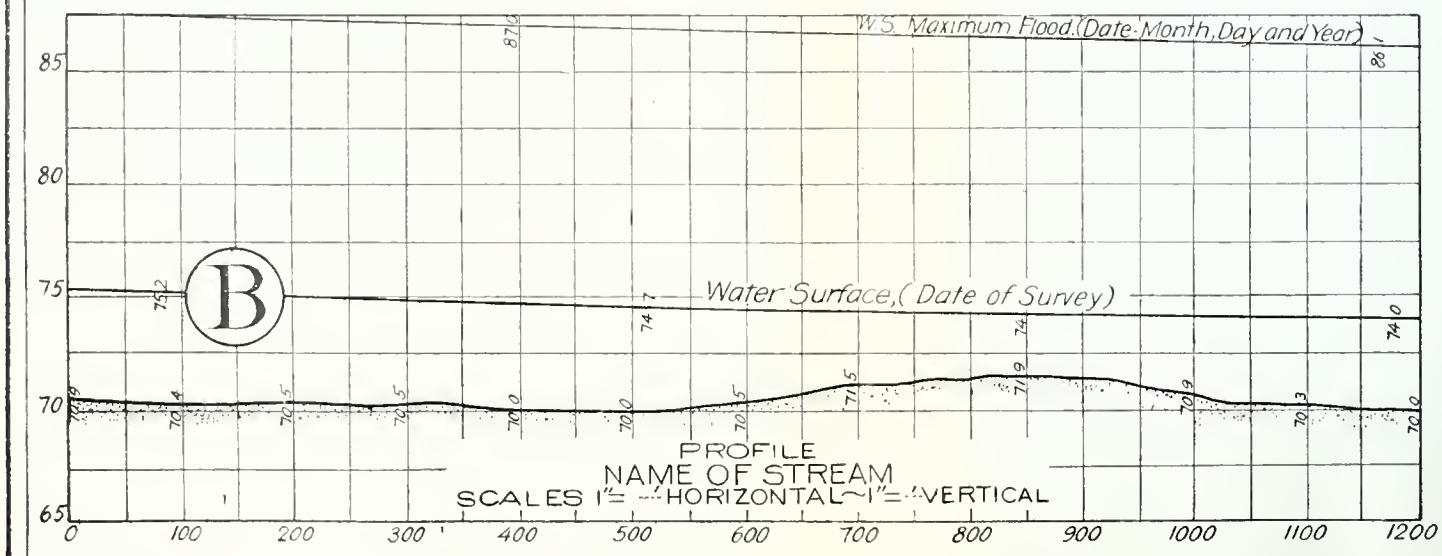
·NAME·OF·STREAM·

AT OR NEAR

NAME OF TOWN, TOWNSHIP AND COUNTY.

·SCALES·AS·SHOWN·

DATE




PROFILE

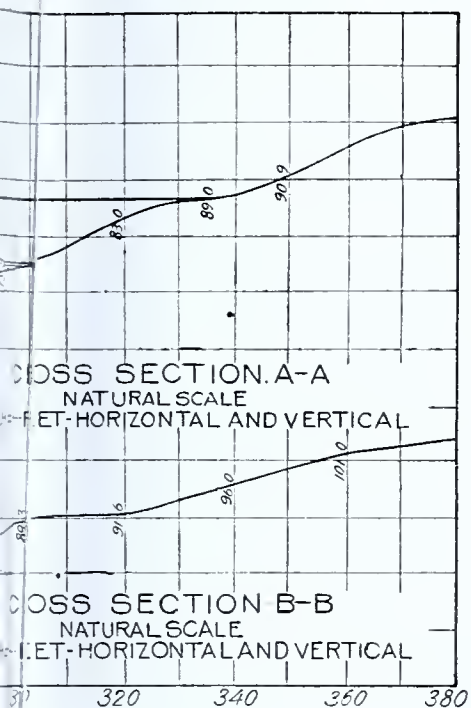
NAME OF STREAM

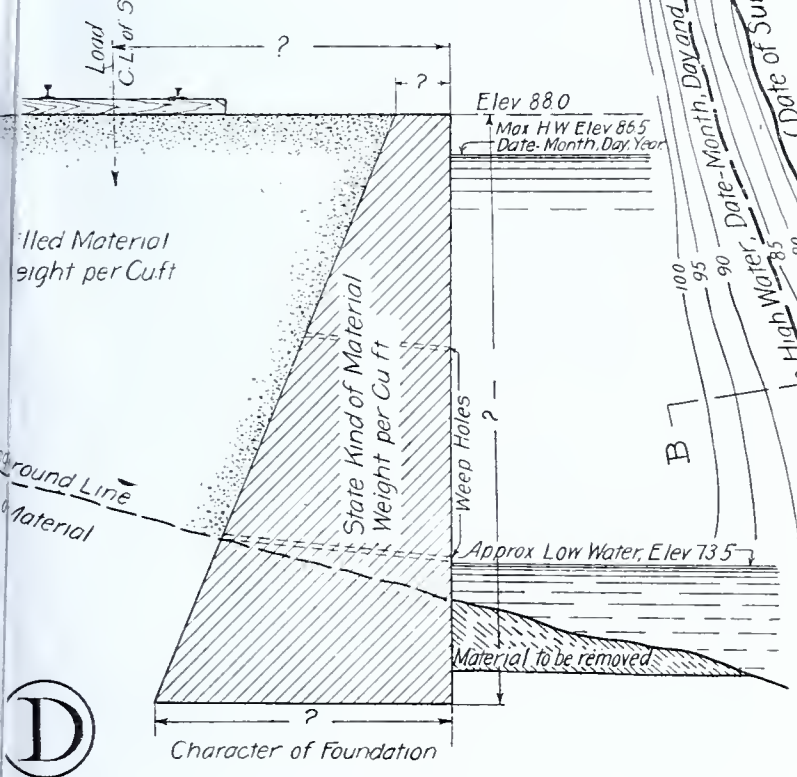
SCALES 1"= -' HORIZONTAL ~ 1"= -' VERTICAL

— ℄ Existin

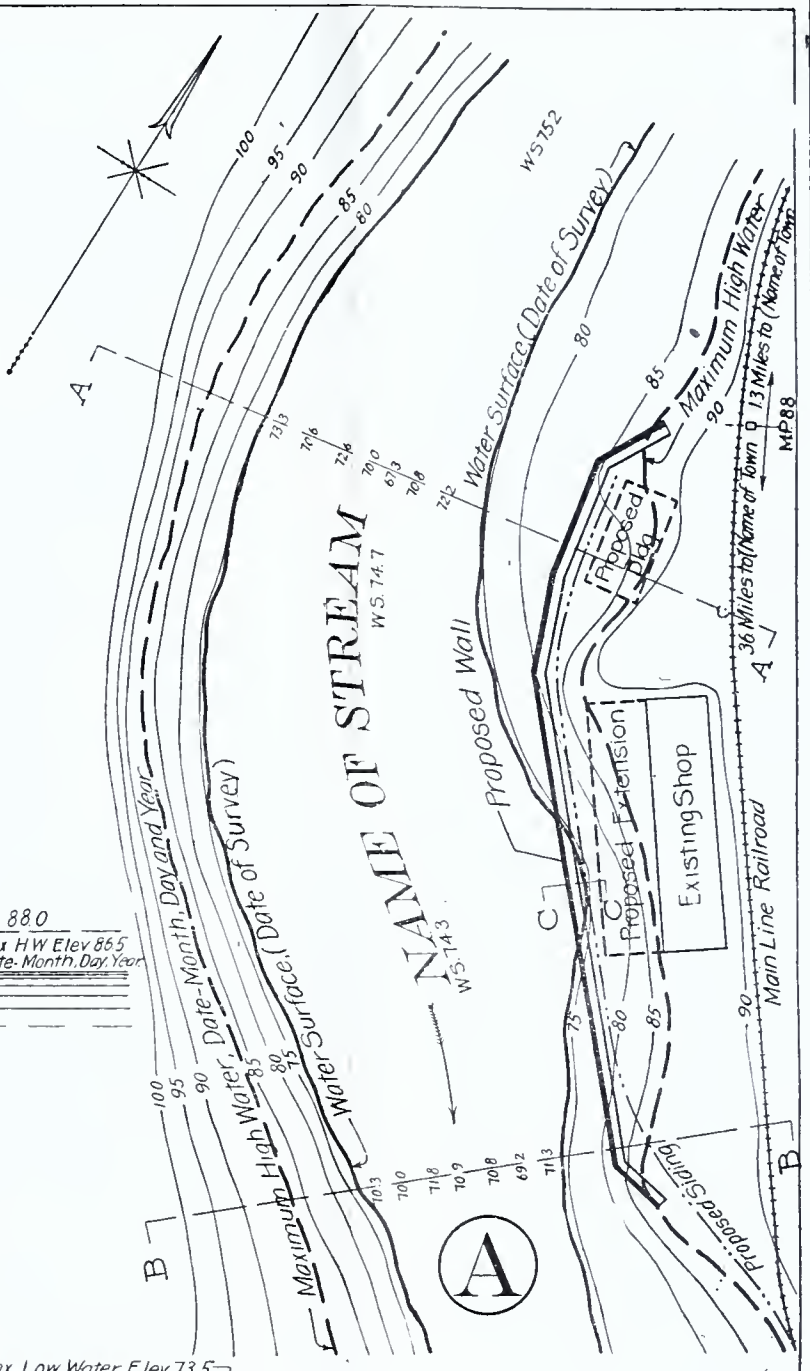
Kind

PLATE. III.




DETAIL
CROSS SECTION C—C
SCALE INCH = ····FEET




PLAN
SCALE-INCH = ····FEET

IN TESTIMONY WHEREOF we have hereunto set our hands and the corporate seal of the said ..... Company, this ..... day of ..... A. D. 19 .

.....
*President.*

(SEAL.)
ATTEST:

.....
*Secretary.*

STATE OF PENNSYLVANIA, }
COUNTY OF ..... } SS:

Before me ....., in and for the county aforesaid, personally came the above named .....President and ..... Secretary of the ..... Company, to me well known, and in due form of law acknowledge that they signed the foregoing instrument, and affixed the seal of the said ..... Company thereto as president and secretary respectively of said company, for the uses and purposes therein set forth, and that the seal so affixed is the common or corporate seal of the said ..... Company.

Witness my hand and ..... Seal this..... day of ..... A. D. 19 .

.....

.....

STATE OF PENNSYLVANIA, }
COUNTY OF ..... } SS:

Personally appear before me, this .....day of..... A. D. 19 , .....and..... who being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument and in the resolutions contained therein are true.

Sworn and subscribed before me the day and year aforesaid.

.....

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.....

.....

Filed in the office of the Water Supply Commission of Pennsylvania on the ..... day of ..... A. D. 19 .

.....
*Secretary.*

APPLICATION OF

.....

.....

..... *Company*

*for a new or additional source of supply of water or water power.*

---

OFFICE OF
WATER SUPPLY COMMISSION OF
PENNSYLVANIA

*Harrisburg,* .....19 .

APPROVED:

.....

*Secretary.*

---

EXECUTIVE CHAMBER

*Harrisburg,* .....19 .

APPROVED:

.....

*Governor.*

---

*Filed in the office of the Secretary of the Commonwealth on the ..... day of ..... A. D. 19 .*

.....

*Secretary of the Commonwealth.*

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## APPLICATION FOR A NEW OR ADDITIONAL SOURCE OF SUPPLY OF WATER OR WATER POWER BY COMPANIES FORMED UNDER SPECIAL ACT, OR BY MERGER OR BY PURCHASE.

FORM 14.

*To the Secretary of the Commonwealth of Pennsylvania:*

In compliance with the requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An act to require all water and water power companies hereafter incorporated, or hereafter formed by merger and consolidation, or hereafter purchasing the property and franchises of any other such company, to designate the exact source of their supply of water or water power; and to require all existing water and water power companies, merging and consolidating or purchasing the property and franchises of any other such company, to accept the provisions of this act, and of the act approved April thirteenth, one thousand nine hundred and five, entitled, 'An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incor-

porated under law,' and providing the manner in which water and water power companies, subject to the provisions of this act, may secure a new or additional source of supply for their water or water power," approved the 7th day of June, A. D. 1907, we, the undersigned, president and secretary of the .....

..... Company, a corporation of the Commonwealth of Pennsylvania duly created on the .....
day of ..... A. D. 19 ,

(Here state fully all facts concerning the formation of the company, including all mergers and consolidations, and all purchases of the property and franchises of other companies, giving the names of the companies so merging and consolidating, or so purchased.)

for the purpose of .....

and subject to the provisions of the above entitled act of the General Assembly of the Commonwealth of Pennsylvania, approved June 7th, 1907, hereby certify that the following is a full, true and correct copy of resolutions passed and adopted by a vote of a majority in interest of the stockholders of said company, at a meeting of said stockholders duly called and held at the office of the company in .....

on the ..... day of ..... A. D. 19 :

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IN TESTIMONY WHEREOF we have hereunto set our hands and the corporate seal of the said .....
Company, this ..... day of .....
....., A. D. 19 .

.....
President.

(SEAL).
ATTEST:

.....
*Secretary.*

STATE OF PENNSYLVANIA, }
COUNTY OF ..... } SS:

Before me, .....
....., in and for the county aforesaid,
personally came the above named .....
President, and ..... Secretary,
of the .....
Company, to me well known, and in due form of law acknowledged that they signed the foregoing instrument, and affixed the seal of the said .....
..... Company
thereto as president and secretary respectively of said company, for the uses and purposes therein set forth, and that the seal so affixed is the common or corporate seal of the said.....
..... Company.
Witness my hand and ..... Seal this
..... day of .....A. D. 19 .

.....

.....

STATE OF PENNSYLVANIA, }
COUNTY OF ..... } SS:

Personally appeared before me, this ..... day of.....
A. D. 19 , ..... and .....,
who being duly sworn, according to law, depose and say that the

statements contained in the foregoing instrument and in the resolutions contained therein are true.

Sworn and subscribed before me the day and year aforesaid. } .....
.....

.....

.....

Filed in the office of the Water Supply Commission of Pennsylvania on the ..... day of ..... A. D. 19 .

.....
*Secretary.*

APPLICATION OF

.....

.....

..... *Company*

*for a new or additional source of supply of water or water power.*

OFFICE OF

WATER SUPPLY COMMISSION OF PENNSYLVANIA

*Harrisburg,* .....*19* .

APPROVED:

.....
*Secretary.*

---

EXECUTIVE CHAMBER

*Harrisburg,* .....*19* .

APPROVED:

.....
*Governor.*

---

*Filed in the office of the Secretary of the Commonwealth on the ..... day of..... A. D. 19* .

.....
*Secretary of the Commonwealth.*

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APPLICATION FOR PERMIT TO ERECT, CHANGE, REPAIR OR EXTEND A WATER OBSTRUCTION, UNDER THE ACT OF JUNE 25, 1913, (P. L. 555).

FORM 15.

....., Penn'a,

....., 19 .....

*To the Water Supply Commission of Pennsylvania:*

In compliance with the provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An act providing for the regulation of dams, or other structures or obstructions, as defined herein, in, along, across or projecting into all streams and bodies of water wholly or partly within, or forming part of the boundary of, this Commonwealth; vesting certain powers and duties in the Water Supply Commission of Pennsylvania, for this purpose; and providing penalties for the violation of the provisions hereof," approved the 25th day of June, A. D. 1913, .....

.....

(Here state name of person or persons, partnership, association, corporation, county, city, borough, town or township.)

.....

.....

hereby makes aplication for the consent or permit of the Water Supply Commission of Pennsylvania to construct a .....

.....

or to make a change in or addition to a .....

.....

in, along or across .....

(Here state name of stream or other body of water.)

.....

at a point .....

(Here give location, by distance from mouth of stream, county, township or municipal boundary.)

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for the purpose of .....

(Here state fully the purpose, necessity and description of the proposed obstruction.)

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in accordance with the complete maps, plans, profiles and specifications filed with this application and made a part hereof.

SEAL:

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(Address) .....

.....

ATTEST:

.....

NOTE.—This application, together with all maps, plans, profiles and specifications, and all papers, information and data filed in connection therewith, will remain on file in the office of the Water Supply Commission of Pennsylvania.

OFFICE OF THE

WATER SUPPLY COMMISSION OF PENNSYLVANIA.

Approved the ..... day of ..... A. D. 19.....

WATER SUPPLY COMMISSION OF PENNSYLVANIA.

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APPLICATION

OF

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for the consent or permit to .....

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Filed in the office of the Water Supply Commission of Pennsylvania on the ..... day of ....., A. D. 19.....

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*File Clerk.*

Plan No.

PERMIT FOR ERECTION, ALTERATION, REPAIR OR EXTENSION OF DAM, UNDER ACT OF JUNE 25, 1913, (P. L. 555).

Form No. 16....Dams File No.....

COMMONWEALTH OF PENNSYLVANIA

THE WATER SUPPLY COMMISSION

PERMIT

The Water Supply Commission of Pennsylvania, under authority of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An act providing for the regulation of dams, or other structures or obstructions, as defined herein, in, along, across, or projecting into all streams and bodies of water wholly or partly within, or forming part of the boundary of, this Commonwealth; vesting certain powers and duties in the Water Supply Commission of Pennsylvania, for this purpose; and providing penalties for the violation of the provisions hereof," approved the 25th day of June, A. D. 1913, hereby issues this permit to .....

.....

giving its consent to the.....

..... of a dam .....

..... in and across.....

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This permit is issued in response to an application filed in the office of the Water Supply Commission of Pennsylvania on the .....

..... day of ....., A. D. 19....., and with the understanding that the work shall be performed in accordance with the maps, plans, profiles and specifications filed with and made part of the application, .....

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subject, however, to the provisions of the Act of June 25, 1913, P. L. 555, and the following conditions, regulations and restrictions:

1. That this permit does not give any property rights, either in real estate or material, nor any exclusive privileges; neither does it authorize any injury to private property nor invasion of private rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining Federal assent, where necessary;

2. That the work shall at all times be subject to supervision and inspection by representatives of the Commission, and that no changes in the maps, plans, profiles and specifications as approved shall be made except with the written consent of the Commission. The Commission, however, reserves the right to require such changes or modifications in the maps, plans, profiles and specifications as may be considered necessary. The Commission further reserves the right to suspend or revoke this permit at any time, should such action be deemed necessary in the interest of public safety;

3. That the work shall be under the direction of a competent engineer, and that he or a competent representative shall be on the ground .....during construction and until the completion of the dam;

4. That the Commission shall be notified in advance of the proposed time of commencement of this work; that no material shall be placed on any portion of the foundation until such portion of the foundation has been approved, in writing, by the Engineer of the Comission, or his representative;

5. That a detailed report upon the status of the construction shall be mailed to the "Water Supply Commission of Pennsylvania, Harrisburg, Pa.," on the 1st and 16th days of each month until the work upon the dam has been completed;

6. That if this work is not completed on or before the ..... day of ....., A. D. 19....., this permit, if not previously revoked or specifically extended, shall cease and be null and void; and if, upon the expiration or revocation of this permit, the work shall not be completed, the permittee shall, at his own expense and to such extent and in such time and manner as the said Commission may require, remove all or any portion of the incompleted work and restore the watercourse to its former condition. No claim shall be made against the Commonwealth of Pennsylvania on account of any such removal or alteration.

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WITNESS my hand as Chairman of the Water Supply Commission of Pennsylvania this ..... day of ....., A. D. 19.....

WATER SUPPLY COMMISSION OF PENNSYLVANIA.

.....

Chairman.

.....

Engineer.

Commonwealth of Pennsylvania

THE WATER SUPPLY COMMISSION

PERMIT

To .....

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For .....

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PEHMIT FOR ENCROACHMENTS ON STREAMS, (EXCLUSIVE OF DAMS), UNDER ACT OF JUNE 25, 1913.

Form No. 17—Encroachments File No. .....

COMMONWEALTH OF PENNSYLVANIA
THE WATER SUPPLY COMMISSION

PERMIT

The Water Supply Commission of Pennsylvania, under authority of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An act providing for the regulation of dams, or other structures or obstructions, as defined herein, in, along, across, or projecting into all streams and bodies of water wholly or partly within, or forming part of the boundary of, this Commonwealth; vesting certain powers and duties in the Water Supply Commission of Pennsylvania, for this purpose; and providing penalties for the violation of the provisions hereof," approved the 25th day of June, A. D. 1913, hereby issues this permit to .....

giving its consent to the .....

This permit is issued in response to an application filed in the office of the Water Supply Commission of Pennsylvania on the ..... day of ....., A. D. 19....., and with the understanding that the work shall be performed in accordance with the maps, plans, profiles and specifications filed with and made part of the application, .....

.....

.....

.....

.....

.....

.....

subject, however, to the provisions of the Act of June 25, 1913, P. L. 555, and the following conditions, regulations and restrictions:

1. That this permit does not give any property rights, either in real estate or material, nor any exclusive privileges; neither does it authorize any injury to private property nor invasion of private rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining Federal assent, where necessary;

2. That the work shall at all times be subject to supervision and inspection by representatives of the Commission, and that no changes in the maps, plans, profiles and specifications as approved shall be made except with the written consent of the Commission. The Commission, however, reserves the right to require such changes or modifications in the maps, plans, profiles and specifications as may be considered necessary. The Commission further reserves the right to suspend or revoke this permit at any time, should such action be deemed necessary in the interest of public safety;

3. That all construction debris, excavated material, brush, rocks and refuse incidental to this work shall be removed entirely from the stream channel and placed either on shore above the influence of flood waters, or at such dumping ground as may be approved by the Commission;

4. That there shall be no unreasonable interference with the free discharge of the river or stream nor with navigation during construction;

5. That if future operations by the Commonwealth of Pennsylvania require modification of the structure or work, or if, in the opinion of the Water Supply Commission of Pennsylvania, it shall cause unreasonable obstruction to the free passage of floods or navigation, the permittee shall, upon due notice from the Water Supply Commission of Pennsylvania, remove or alter the structural work or obstructions caused thereby, without expense to the Commonwealth of Pennsylvania, so as to increase the flood carrying capacity of the channel or render navigation reasonably free, easy and unobstructed, in such manner as the said Commission may require; and if, upon the expiration or revocation of this permit, the work shall not be completed, the permittee, at his own expense and to such extent and in such time and manner as the said Commission may require, shall remove all or any portion of the incompleted work and restore the watercourse to its former condition. No claim shall be made against the Commonwealth of Pennsylvania on account of any such removal or alteration;

6. That the permittee shall notify the Water Supply Commission of Pennsylvania when this work is commenced and at least two weeks before the probable time of completion;

7. That if this work is not completed on or before the ..... day of ....., A. D. 19....., this permit, if not previously revoked or specifically extended, shall cease and be null and void.

WITNESS my hand as Chairman of the Water Supply Commission of Pennsylvania this ..... day of ....., A. D. 19.....

WATER SUPPLY COMMISSION OF PENNSYLVANIA.

.....

Chairman.

.....

Engineer.

Commonwealth of Pennsylvania

THE WATER SUPPLY COMMISSION

PERMIT

To .....

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For .....

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## ACCEPTANCE OF ACT OF JUNE 7, 1907, AND ACT OF APRIL 13, 1905.

FORM 16.

*To the Water Supply Commission of Pennsylvania:*

The .....
Company, a corporation created on the ..... day of .....,
A. D. 19....., under and by virtue of the provisions of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An act to provide for the incorporation and regulation of certain corporations," approved the 29th day of April, A. D. 1874, and the supplements thereto and the amendments thereof, for the purpose of .....
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hereby certifies under the seal of said corporation:

That at a meeting of the stockholders of said company, held pursuant to due and legal notice at the office of said company, on the ..... day of ..... A. D., 19....., the following resolutions were adopted by the persons or bodies corporate holding the majority in value of the capital stock of said corporation:

"RESOLVED, That this corporation hereby accepts the provisions of the act of the General Assembly of the Commonwealth of Pennsylvania, entitled, 'An act to require all water and water power companies hereafter incorporated, or hereafter formed by merger and consolidation, or hereafter purchasing the property and franchises of any other such company, to designate the exact source of their supply of water or water power; and to require all existing water and water power companies, merging and consolidating or purchasing the property and franchises of any other such company, to accept the provisions of this act, and of the act approved April thirteenth, one thousand nine hundred and five, entitled, "An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law," and providing the manner in which water and water power companies, subject to the provisions of this act, may secure a new or additional source of supply for their water or water power,' approved the 7th day of June, A. D. 1907, and hereby agrees to be subject to, and bound by, the provisions of said act with like effect as if this corporation had been formed subsequently to the passage of said act;

"RESOLVED, That this corporation hereby accepts the provisions of the act of the General Assembly of the Commonwealth of Pennsylvania, entitled, 'An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the

land covered thereby, shall not be exercised by water companies incorporated under law,' approved the 13th day of April, A. D. 1905, and hereby agrees to be subject to, and bound by, the provisions of said act with like effect as if this corporation had been formed subsequently to the passage of said act;

"RESOLVED, That the president and secretary of this corporation be, and they are hereby, authorized and directed to make and execute, under the corporate seal, the written acceptance, as required by the said act of June 7th, 1907, and to file the same in the office of the Water Supply Commission of Pennsylvania, and also to file a certified copy of the same in the office of the Secretary of the Commonwealth of Pennsylvania."

IN TESTIMONY WHEREOF, The said ..... Company has caused its corporate seal to be hereunto affixed, duly attested by its president and secretary this ..... day of ..... A. D. 19.....

..... COMPANY.

By .....

*President.*

(SEAL.)

ATTEST:

.....

*Secretary.*

STATE OF PENNSYLVANIA, }
COUNTY OF ..... } SS:

BE IT REMEMBERED, That on the ..... day of ..... A. D. 19...., before me, ..... in and for the said county, personally appeared ..... President, and ..... Secretary, of the ..... Company, who, being duly sworn, depose and say that they were personally present at the execution of the above written certificate, and saw the common seal of the said corporation duly affixed thereto, and that the seal so affixed thereto is the common or corporate seal of the said company, and that the above written instrument or certificate was duly signed and sealed by and as and for the act and deed of the said company for the uses and purposes therein mentioned; and that the names of these deponents, subscribed to the said certificate as the president and as the secretary of the said corporation, in attestation of the due execution thereof, are of these deponents' own proper and respective handwriting.

.....

.....

Sworn and subscribed before me the day and year above written. Witness my hand and ..... seal.

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..... *Company.*

ACCEPTANCE

OF

Act of June 7th, 1907, and Act of April 13th, 1905.

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*Filed in the office of the Water Supply Commission of Pennsylvania on the.....*
*day of ..... A. D. 19.....*

.....

*Secretary.*

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CERTIFICATE OF WATER SUPPLY COMMISSION EVIDENCING ACCEPTANCE OF ACT OF JUNE 7, 1907, AND ACT OF APRIL 13, 1905.

FORM 12.

OFFICE OF

THE WATER SUPPLY COMMISSION OF PENNSYLVANIA

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*Harrisburg,* ....., *19*.....

PENNSYLVANIA, SS:

I DO HEREBY CERTIFY, That the foregoing and annexed is a full, true and correct copy of the written acceptance by the ..... ..... Company of the provisions of the act of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An act to require all water and water power companies hereafter incorporated, or hereafter formed by merger and consolidation, or hereafter purchasing the property and franchises of any other such company, to designate the exact source of their supply of water or water power; and to require all existing water and water power companies, merging and consolidating or purchasing the property and franchises of any other such company, to accept the provisions of this act, and of the act approved April thirteenth, one thousand nine hundred and five, entitled, 'An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law,' and providing the manner in which water and water power companies, subject to the provisions of this act, may secure a new or additional source of supply for their water or water power," approved the 7th day of June, 1907; and of the act of the General Assembly of the

Commonwealth of Pennsylvania, entitled, "An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law," approved the 13th day of April, 1905, as the same remains on file in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand the day and year above written.

.....

*Secretary, Water Supply Commission of Pennsylvania*